

## **CHILDREN'S RIGHTS ARE HUMAN RIGHTS**

A. Cyril S.J.

Vaigarai Publishing House, Dindigul

"Childhood is an age of learning and enjoyment, let children be children" said Dr.C.T.Kurien at the National Convention on Child Labourers, in Chennai. Nearly 100 million child labourers in India today are denied their right to learning and enjoyment. They begin to live the lives of adults at the age of five. In fact, India has the largest population of child labourers in the world.

Children are the most precious of all the assets of any society, for no other reason than that they are human beings. While on the one hand children are considered as the most valuable of the assets, on the other hand they are also the most vulnerable section of the human race. This is one of the telling examples of the many paradoxes we witness in society today. In its tender age the child is made to become an easy prey to the machinations and manipulations of the adult world. The inexperienced child is fed with ideas and information of the adult media world causing incalculable damage to its healthy growth and promising future. In this article I would like to throw some light on the understanding and protection of children's rights based on the UN convention on the rights of children and the Indian constitution.

### **Two Ideological Trends**

Two strong sets of forces are operative in the country today: on the one hand, the nation witnesses the spread of capitalist market economy which increasingly promotes unjust accumulation of capital and unbridled consumerism, ruthless exploitation of

children, religious fundamentalism with its crude forms of onslaught against cultural and religious pluralism and against the secular social fabric, aggressive patriarchal patterns of behaviour resulting in various forms of gender violence, violation of the rights of children and caste communalism with its divisive and hegemonic tendencies; on the other hand, assertions of humanism, gender sensitivity, protection of rights of the children, secularism, cultural and religious pluralism, regional federalism and democratic ethos are also being palpably felt on the national scene.

The former, if and when unchecked, violate the rights of the citizens, especially those of the marginalised sections. The victims are women, children, dalits, tribals, labourers, consumers, human rights activists and also ecology and environment. They are being marginalised through a double process of *exclusion* and *alienation* from the mainstream of life, and alienation from life itself. In other words, the human dignity and rights of these people are heavily at stake today, more than ever.

On the other hand, the latter sets of forces, if and when promoted, have the inherent capacity to fashion a society that is humane and egalitarian, secular and democratic as envisioned by the Indian Constitution and by the UN Charter and international conventions.

One group of people is determined to violate the rights of the vulnerable and another group of people is trying to protect the violated. In short, a silent ideological and cultural war is going on between these two groups: the human rights violators and the violated; the destroyer of human rights culture and the promoter. All these have a clear impact on children – often deeper than on any other group in society.

### **Definition of a Child**

The Census of India treats persons below the age of fourteen as "children". While making use of the standard demographic data, social scientists include females in the age group of 15 to 19 years under the category of the "girl child". According to the Constitution, no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment (Article 23).

No child who has not completed his fourteenth year shall be required or allowed to work in any factory (Factories Act, 1948).

No person below eighteen years of age shall be allowed to work in any mine or part thereof (Mines [Amendment] Act, 1983).

"Child" means a person who has not completed his fourteenth year of age (The Child Labour Prohibition and Regulation Act, 1986).

According to UN Convention on the rights of Child: "... a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier" (Article 1).

## I. THE VIOLATION OF CHILDREN'S RIGHTS

That all human beings need and long to experience fully their childhood is an undeniable fact. This reality is not to be described merely in terms of physical stature and age. It means that a child needs to go through childhood processes which are necessary for organic growth and maturity. Spontaneity and freedom, laughter and playfulness, inquisitiveness and imaginativeness, adventure and activeness – these are some of the many traits which define these processes. Provisions of adequate space for the manifestation of these aspects in a child's life enhances the building up of the identity of the child as a person with dignity and selfhood.

There are different categories of children below the age of 14 who are denied of their fundamental rights and dignity: street children, child labourers, juvenile delinquent children, girl children, refugee children, disabled children, orphan children etc. These children lose their right to normal life, right to food, right to free and primary education, right to play, right to leisure and free time, right to physical and mental development, right to protection from sexual exploitation, right to protection from exploitation of any kind, right to freedom of thought and express his/her opinion, right to liberty, right to be protected from work, right to seek and receive information, right to be protected from abduction and sale, right to health and medical care, right to access to information and mass media, right to privacy, right to seeking refuge, right to enjoy

equal rights irrespective of colour, race, sex and religion, right to freedom of association etc.

### 1. Child Labour

According to the Child Labour (Prohibition and Regulation) Act, 1986, a child labourer is defined as a person who has not completed the age of fourteen; and is engaged in work which is detrimental to the growth and development of the child.

In other words, "Child labour includes children prematurely leading adult lives, working long hours for low wages, under conditions damaging to their health and to their physical and mental development, sometimes separated from their families, frequently deprived of meaningful education and training opportunities that could open up for them a better future."<sup>1</sup>

Economic exploitation of children in India is extensive and appears to have increased over the years. "The problem of exploitations of labour, especially child labour, even slavery is getting worse in the developing countries. In some areas of India, Ghana, Indonesia and Senegal, according to the International Labour Organisation (ILO) survey 25 per cent of the children are workers... There are about 250 million child workers aged 10-14 in the world, without taking into account those who work with their families in domestic activities. The greatest numbers are in Asia, 44.6 millions; followed by Africa, 23.6 millions; Latin America, 5.1 millions..."<sup>2</sup>

Prevalence of such high levels of child labour is attributable in good measure to the fact that primary education for children is not compulsory in India. Children who are out of school invariably perform work of some sort, either at home or outside, and at wages that are often exploitative, and under conditions that are clearly harmful. Most of the working children also belong to families that

---

<sup>1</sup> Caroline D. Souza and Jaya Menon (eds.), *Violation of the Child's Human Rights*, Bombay: Research and Documentation Centre, Justice and Peace Commission, 1995, p. 14.

<sup>2</sup> Dipak Basu, "Combating Child Labour" in *The Hindu*, March 7, 2000.

are extremely poor and socially downtrodden. Parents of such children, themselves deprived of basic education, find it extremely difficult to support their families. Children who work, therefore, are the ones who need education most of all to break out of the poverty and debt trap.

The Convention of the Rights of a Child (CRC)<sup>3</sup> states that state parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular, make primary education compulsory and free to all (Article 28).

Recognising the need to make available free and universal primary education is not new to India. Article 45 of the Directive Principles of State Policy declares: The State shall endeavour to provide within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen (Constitution of India, 1950).

### **Causes of Child Labour**

The causes of child labour are complex and one cannot pinpoint any single cause

#### **1. Socio-Economic Conditions**

Some of the socio-economic causes are:

i. Poverty, unemployment, underemployment and low wages, which are caused by inequitable distribution of resources are said to be some of the causes of child labour. It may be true to some extent. At the same time, this argument is raised and used to justify child labour in many cases. "Studies have shown that families above the poverty line also send their young children to

---

<sup>3</sup> "Convention on the Rights of the Child" was adopted by the UN General Assembly in resolution 44/25 of 20 November 1989 at New York, opened for signature and ratification on 26 January 1990 and entered into force on 2 September 1990. See the details of its articles in *Human Rights Instruments*, The Netherlands: Ministry of the Foreign Affairs of the Netherlands, 1993, pp. 40-46.

work to increase earnings and not merely to survive."<sup>4</sup> In some cases poverty is created by the irresponsibility of the parents especially the male-parent. On the part of the employers, it is not merely the poverty but the "exploitation of the poverty" which perpetuates child labour and child right's abuse.<sup>5</sup>

ii. In rural areas, the land belongs to the rich zamindars. The seasonal nature of agriculture, i.e., agriculture done for only some months of the year, gives rise to migrant and wage labour. In the cities the people from the villages lack skills to earn sufficiently to support their families. In some areas, the dominance of a particular community and the practice of caste system engender exploitation of the weaker section. The largest number of child workers belongs to the scheduled castes and tribes who are compelled to work to repay their parents' debt. Employers claim that by giving children works, they are helping the family to make ends meet. However, often in this guise employers get the work done by children for a very low wage.

## 2. Breakdown of the Family System

Children may take to the street in order to escape traumatic family situations such as desertion/death of parent, presence of the step parent, physical abuse and alcoholism of parents, or pauperisation of the family. Children are compelled to earn in order to survive due to the absence of support structures in and outside the family.

## 3. Public Apathy

Child labour is allowed to prevail due to public apathy. People have a wrong notion that it benefits children by imparting to them skills and helps supplement their family income.

The Convention states that State Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere

---

<sup>4</sup> M.K. Dhar, "Continued Violation of Children's Rights," *Children's Voices for Human Rights*, no. 1 (1997), p. 10.

<sup>5</sup> Cf. *ibid.*

with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development (Article 32).

## 2. Street Children

According to the definition of UNICEF the term (street) denotes a place of congregation, but also a certain set of working and living conditions. The vast majority are on the street to make a living for their families and/or themselves. The returns may be partly and may be in kind rather than in cash. For these children the street is above all a work place. Secondly they spend a large amount of time working on the street because of the low returns on their labour. Thirdly, most make their way in the informal sector as petty hawkers, shoe-shine boys, and scavengers of raw material or even thieves and street prostitutes. Fourthly, by the nature of their work and life, they are normally on their own, largely unprotected by adults. For these reasons, above all others, they are vulnerable "to many dangers and abuses and they tend to receive few services essential to their protection and development".<sup>6</sup>

The UNICEF definition lays emphasis on five elements in the meaning of street children: 1. A place of congregation that is the street; 2. A certain set of working predicament; 3. A set of living conditions; 4. A large amount of time spent in the streets; 5. A lack of protection and vulnerability to dangers and abuses.

The number of child street workers in the cities of India is the largest in the world. UNICEF in collaboration with the Ministry of Welfare, Govt. of India, conducted a situational analysis of street children studies in 14 cities. It is estimated that there are anywhere between 4,25,752, to 4,73,952 street children in 10 of these cities. Contrary to common belief most of the children in the metropolitan cities are not rootless or unattached. As many as 77.2% are either with their parents or with other family members and only 20.8% live outside their family.

---

<sup>6</sup> Caroline D. Souza and Jaya Menon (eds.), *Violation of the Child's Human Rights*, p. 4.

Majority of street children are working i.e. 58.3% are self-employed as porters, vendors, shoe-shiners, newspaper sellers, parking attendants, etc. About 32.7% are employed in shops and establishments. Though the law prohibits children from working for more than 5 hrs. a day, 63.3% of the children work for 8 to 12 hours a day. The average daily income of 70.3% of the children is around Rs.10/- and 28.4% of the children do not have any rest period.

The familiar sight of street children at practically every turn of the road in the city might lead one to think that this is a problem of just Indian cities.

### **Categories of Street Children**

#### **i. The children *on* the street:**

By far the largest of three categories consists primarily of working children who still have family connections of a more or less regular nature. Their focus in life is still the home. A very few attend school. Most return home at the end of each working day and most will have a sense of belonging to the community in which their home is situated. They are children *on* the streets.

#### **ii. Children *of* the street:**

This second group is smaller but more complex. Children in this group see the street as their home and it is there that they seek shelter, food and a sense of family among companions. Family ties exist but are remote and their former home is seldom visited. They are children *of* the street.

#### **iii. Abandoned children:**

This third group may appear to form part of the second group, and in daily activities are particularly indistinguishable. However, by virtue of having severed all ties with the biological family, they are entirely on their own, not just for material but also for psychological survival. They are also children *of* the street.

It is important to stress that these children are not necessarily boys. Girls may not be as visible in the everyday street life, but they are there in great numbers and increasingly so.

#### iv. Street girls:

If the girl child is neglected, the street girl or "girl child on the streets" is even more neglected. The life of a street girl is as difficult as that of a boy. But she is more vulnerable than a boy because of her gender. Her life on the street is twice more exploitative and oppressive than that of a boy.

## II. UN CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

Child rights, as a concept, can be traced back to the 1923 Charter of the Rights of the Child. It came to be universally accepted and established with the Geneva Declaration of the Rights of the Child which was drafted by the Save the Children Fund International Union and adopted by the League of Nations in 1924.

In 1959, the United Nations adopted the Declaration of the Rights of the Child, which was more progressive and comprehensive than the earlier declarations. Though it played a significant role in inspiring governments as well as the NGO fraternity to draft and adopt child-centred legislation and strategies, it did not impose any specific obligations on the member-states who had ratified the declaration.

This paved the way to the Convention on the Rights of the Child (CRC), a historic document for children all over the world which was adopted by the UN General Assembly on 20 November 1989. By recognising the 'inherent dignity and worth' of the child, the Convention affirmed its belief in the basic capacity of the child to enjoy and enforce her/his rights. It recognised the child as an individual with needs, which evolve with age and maturity. It calls on us all to take children seriously. It no longer tolerates indifference. It has led us to recognise that children must be placed at the centre of the political agenda and they constitute a distinct and priority concern in the national and international context.

In fact, it has been ratified by 191 countries around the world with the exception of only two: Somalia and the United States. No other convention has achieved such wide acceptance. As

its preamble recognises, the convention takes into account the importance of the traditions and cultural values of each people for the protection and harmonious development of the child.<sup>7</sup> It reflects the principal legal systems of the world and acknowledges the specific needs of developing countries. Based on the richness of such diversity, the convention affirms the value of the universality of human rights. However, the CRC cannot be regarded as an end but rather as the beginning of a process towards the full achievements of the children's rights.

Although many of the rights that the CRC covers can be found in other international treaties and declarations, the Convention also includes many rights that were not previously covered. CRC has a total of 54 articles. While 41 articles define child rights and the responsibility of the state in implementing these rights, the rest deal with implementation. These rights can be broadly classified into four categories:

*i. The right to survival* which includes the right to life, the highest attainable standard of health, nutrition, and adequate standards of living. It also includes the right from birth to a name, the right to acquire a nationality, and as far as possible, the right to know and be cared for by his or her parents.

*ii. The right to protection* which includes freedom from all forms of exploitation, abuse, inhuman or degrading treatment, and neglect including the right to special protection in situations of emergency and armed conflicts.

*iii. The right to development* which includes the right to education, support for early childhood development and care, social security, and the right to leisure, recreation and cultural activities.

*iv. The right to participation* which includes respect for the views of the child, freedom of expression, access to appropriate information, and freedom of thought, conscience and religion.

---

<sup>7</sup> Human Rights Instruments, p. 40.

### **A New Ethical Attitude towards Children**

In light of the Convention on the Rights of the Child, children are no longer envisaged as mere recipients of services or beneficiaries of protective measures. Rather, they are subjects of rights and participants in actions affecting them. They need to be respected in their individuality and in their evolving capacity to influence decisions relevant to their lives. However, in countries where democratic institutions have been established, children have made us realise that the system, which was proclaimed to be based on participation and public scrutiny, has failed to listen to the voices of the most vulnerable. The system was not prepared to take into real consideration the special needs and the unique potential of children. However, in the light of the Convention, the views of children need to be respected and taken into account when policies are shaped, actions undertaken, and results assessed.

Respect for children's rights cannot be perceived as an option, as a question of favour or kindness to children, or as an expression of charity. Children's rights generate obligations and responsibilities that must be honoured. They need to be perceived as an expression of solidarity and partnership, empowering children to participate actively in the improvement of their situation and in the broader process of social change.

The Convention stresses the fundamental importance of the human rights of every child. Each child has equal and inalienable rights, wherever he or she may live. While it is important to improve the situation of children as a group, it is essential to go beyond attaining good averages or a high rate of progress. It is necessary to consider the specific reality of those children who have not been affected by the wave of general progress, who have remained invisible or forgotten and who are becoming increasingly vulnerable and marginalised. Thus, it is important to fight the invisibility of the disadvantaged, to promote support to those in greater need, and to narrow prevailing social, economic, or geographic disparities. It is necessary to address children in rural and urban areas, including those living in the poor peripheral areas, children in institutions, children belonging to minority or indigenous groups, asylum seekers, and refugee children.

The Convention also stresses that it is important to consider all areas that are relevant to children's lives, including those previously neglected by researchers, data collectors or policy makers: from sexual exploitation to armed conflicts, child labour to the family environment, birth registration to juvenile justice, the right to play and leisure to the right of freedom of opinion. With this purpose in mind, relevant indicators of a quantitative and qualitative nature have increasingly been identified to assess trends over time, identify disparities, and to help understand the root causes of problems affecting children. These indicators must assess new ways to realise rights, for example, equity and non-discrimination in access to services or quality education.

The Convention indicates in an unequivocal manner that children's rights are human rights. They are not special rights: they are simply the fundamental rights inherent to the human dignity of every person. The rights of the child are indivisible and interrelated; all are important and essential to the harmonious development of the child.

## **CONCLUSION**

Enjoyment of childhood is the goal of a set of aspirations of any child. The experiences of adults testify to the enjoyment or denial of these aspirations in their early years of life. Denial of such enjoyment is a disorientation of human life. This is manifested by the actuality of varied situations faced by a large number of children. This deviation from the organic movement of life towards realising the ideal of childhood requires careful attention and committed action on the part of the state and civil society. Let us not consider children merely in terms of "age", but as human beings who are precious and valuable with self-worth and who should hence live and enjoy the life of childhood to the full.