

# A Study on the Potential of Legal System in Safeguarding the Right to Education of Street Children in Sri Lanka

Samarakoon A.S

General Sir John Kotelawala Defence University, Sri Lanka

**Abstract:** uneducated street children are a challenge to the national growth of a country. Education can be consider as a mechanism which can increase the national growth. Although there is free education in srilanka, there are a large number of children like street children , who lose their education due to other expenses. . This study aims to find out whether sri Lankan legal system is potential to protect the right to education of street children. The research problem is whether the existing legal system is potential to protect the right to education of street children. The objectives of this study are, to identify the existing legal framework for right to education of street children in srilanka., to identify the problem of legal framework in related to right to education and to propose the necessary amendments to existing legal framework to fill the gaps. Combination of black letter methodology and comparative analysis with indian legal framework is also taken as a research methodology. For the qualitative analysis primary data are 1978 srilanka constitution, penal code no 2 of 1883, children and young person's ordinance no 48 of 1939, the adoption of children ordinance No. 24 of 1941, Education ordinance No. 31 of 1939, prevention of domestic violence Act No. 34 of 2005, and international covenant on civil and political rights. and for secondary data including web articles and journal articles.

**Keywords:** street children, right to education, national growth, legal potential

## I. INTRODUCTION

Street children are the casualties of Economic growth, war, poverty, loss of traditional values, domestic violence, physical and mental mal practice.

A street child may be,

A child of the street- having no home yet the streets. The family may have deserted that person or may have no relatives left alive. Such a youngster needs to battle for endurance and might move from companion to companion, or live in shelters , for example, abandoned buildings.

A child on the street- visiting his or her family regularly. The child might even return every night to sleep at home, but spends most days and some nights on the street because of poverty, overcrowding, sexual or physical abuse at home.

A part of a street family- A few youngsters live on the walkways or city squares with the remainder of their families. Families uprooted because of destitution, cataclysmic events, or wars might be compelled to live in the city. They move

their assets all around when essential. Regularly the kids in these 'street families' work in the city with different individuals from their families. The large number of uneducated street children can be a challenge to the national growth. Poor literacy leads to the poverty and poverty can affect to the national development of a country. Literacy can be consider as a major role in developing a nation. literacy assists with spreading awareness among the individuals of their right. People with good literacy have a large possibility to find good jobs and enjoy their best lives. A country with a high literacy rate is more likely to attract a large pool of investors and entrepreneurs as well as the inflow of money which consequently greatly affect the country's economy<sup>1</sup>. In this study, the author mainly discusses about the right to education. When discuss about the child rights, right to education plays a vital role in the law. But in sri Lankan constitution right to education is not mentioned. Since that, the unprivileged children like street children depriving their right to education. Right to education of street children is a negligent part of a responsible authorities. Although srilanka have free education poor children deprived it because of the other expenses like travelling, food, stationary etc. This become a prominent issue in a society and the laws should implement to protect the right to education of children in srilanka.

## II. METHODOLOGY

The methodology of this study would be a combination of black letter approach and comparative research methodology. Comparative analysis between srilanka and India will be conducted to identify the differences of the jurisdiction to safeguard the right to education of the street children. For the quantitative analysis primary sources are 1978 constitution, penal code, children and young person's ordinance No. 48 of 1939, Education Act no.5 of 1951, The adoption of children ordinance No. 24 of 1941, prevention of domestic violence Act No. 34 of 2005. And as a secondary data web articles and journal articles was chosen.

<sup>1</sup>Yeoh E. Chu K. (2012). Literacy, Education and Economic Development in contemporary china. SSRN, [online] Available at: <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2207559](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2207559)> [Accessed 5<sup>th</sup> June 2020]

### III. DISCUSSION

#### A. *International standards and issues of legal framework.*

In 1992 the United States proclaimed goals about the predicament of street children. Broadcasting worry over the emergence and maltreatment of street children, and the demonstrations of savagery they confront. The goals called for global company to get to the necessities of worldwide child rights. In united states there is an Act called Runaway, homeless and missing children protection act, but its only discuss about the housing problem of the street children but it did not discuss about the right to education.

In Sri Lanka there is no specific Act like this for street children, it is a big issue in Sri Lanka. The absence of act like this is a prominent problem why the street children are getting ignored.

In the convention of child rights protection there are sections for right to education. They are as follow;

*Article 28 of the CRC* mentioned that, states Parties perceive the privilege of the kids to instruction, with the end goal to accomplish it continuously and based on equivalent chance, they will, specifically: Compulsory essential education and make accessible allowed to all; Improving different types of optional instruction, including general and professional training, or, in other words open to each youngster, and take estimates, for example, the presentation of free training and offering monetary help with instance of need; Access to advanced education for all based on limit by each fitting means; Appropriate measures in instructive and professional data and direction accessible and available to all youngsters; Take measures to empower normal participation at schools and limit drop-out rates.

2. States Parties will consider in regards to class discipline which is regulated in a way predictable with the tyke's human respect and in congruity with the present Convention.

3. States Parties will advance and empower global collaboration in issues identifying with instruction, especially in the parts of disposal of obliviousness and lack of education

Everywhere throughout the world and encouraging access to logical and specialized information and current educating techniques. To accomplish this criteria, specific record will be taken of the requirements of creating nations<sup>2</sup>.

In *Article 29 of the CRC* states that, "1. States Parties agree that the education of the child shall be directed to:

- a. The development of the child's personality, talents and mental and physical abilities to their fullest potential;

- b. The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- c. The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- d. The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- e. The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State"<sup>3</sup>.

The main issue of the CRC is, not mentioning the term street children. It is evident that many countries have so many street children and they are not attending schools. Although CRC implement laws to protect the child rights, the low income countries are not in a position to activate them sometimes, due to financial problems and low resources they have. In addition since these conventions not mentioned street children, legal frameworks and governments does not pay considerable attention to uplift the situation of street children. This convention is ratified in Sri Lanka.

#### B. *Domestic legal framework and its issues.*

When considering the law of Sri Lanka there are many Acts, legislations and ordinance which protect child rights. Their issues have been discussed as follows;

Sri Lankan *1978 constitution* is the main source that protects the child rights. But it does not explicitly express the child rights, it presumed that constitution protects the child rights from Article 12 of the constitution;

"(1) All persons are equal before the law and are entitled to the equal protection of the law.

(2) No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds: Provided that it shall be lawful to require a person to acquire within a reasonable time sufficient knowledge of any language as a qualification for any employment or office in the Public, Judicial or Local Government Service or in the service of any public corporation, where such knowledge is reasonably necessary

<sup>2</sup>*Convention on the right of the child* [online] [accessed on 13 th june 2020] Available at: <<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>

<sup>3</sup>Ibid

for the discharge of the duties of such employment or office: Provided further that it shall be lawful to require a person to have sufficient knowledge of any language as a qualification for any such employment of office where no function of that employment or office can be discharged otherwise than with a knowledge of that language.

(3) No person shall, on the grounds of race, religion, language, caste, sex or any one such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion.

(4) Nothing in this Article shall prevent special provision being made, by law, subordinate legislation or executive action, for the advancement of women, children or disabled persons.”<sup>4</sup>

*Penal code* can be discussed as a source which is protecting the child rights, but mainly it is not discussing any education rights. It is discussed about the abuses, violence and other harmful things that children are facing in day today life. Loop hole in the penal code is it not mentioned about the street children. And also even it does not mention about the fines and punishments which can be imposed to the people who are violating the child rights.

*The children and young person's act.* Concerns about, the children should go to school and they implement laws in acts regarding this matter. In part IV section 39 of the act states that a court should undertake the religious pursuance of the child when they make an approved school order.

When the authority made that court order they should determine the religious pursuance of the child, parents, guardians and nearest relative's, and in this section it is only stated about the procedure for approved school orders.

The loop hole of this Act is, it does not discuss about how homeless children like street children can go to school and it's not discussed about what are the laws government should implement to force the child to go to school.

*Child's adoption ordinance* is also a prominent legislation for child protection in Sri Lanka. It discusses about the how parents can adopt the child, its procedure and law relating to it. But in this ordinance, it does not discuss about the education.

The *Education ordinance* of Sri Lanka protects the right to education of the children.

Section 43 of the mandate express that, where the parent of a child at the very least five and over 14 years old is inhabitant on a domain, he will make that the child go to the school.<sup>5</sup>

And most important thing here is the Act has provision for the offences. In article 45 of the ordinance states parent who violate for provisions of section 43 is guilty for the offence and they are liable for a fine not exceeding one rupees and additional fine of 50 cents.

Article 47(1) of the education ordinance states that, no fees shall be discharged in respect of admissions to or of the education provided in a government school or an assisted school.

This education ordinance is most important ordinance for the protection of the right to education of the children. And it is a special thing that the provision relating to the free education. But this ordinance does not use any provision regarding the street children or does not use the term street children. Because of that even though this ordinance is activated there is a problem that whether the right to education of the street children are secured.

### C. Comparative analysis with India.

social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate government. As per the United Nations convention on right of the children that India endorsed in 1992 all children are conceived with major rights. In India likewise they shield the child rights from constitution, penal code and different laws.

When discussing about the right to education in India,

The important thing is the *constitution of India* have mentioned the right to education by Article 21 A, "it is provided that the Indian state should provide the 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,"<sup>6</sup> but in Sri Lanka constitution it did not provide right to education in the constitution. So the possibility of violating the right to education of children are higher. But in Indian constitution by inserting that right in to the constitution they protect the right to education.

In India, there is another important act called, the *Right of children to free and compulsory education act.* In this act sub section 2 ( d ) of the act mentioned about the " child belonging to disadvantaged group" means child belonging to the scheduled tribe, the socially and educationally backward class

<sup>5</sup>Sri Lanka Education Ordinance 1939. P3. Available at: <[http://www.commonlii.org/lk/legis/consol\\_act/e381147.pdf](http://www.commonlii.org/lk/legis/consol_act/e381147.pdf)> ( Accessed on 13 th June 2020)

<sup>6</sup>Constitution of India (1950).p3 Available at: <[https://www.india.gov.in/sites/upload\\_files/mpi/files/coi\\_part\\_full.pdf](https://www.india.gov.in/sites/upload_files/mpi/files/coi_part_full.pdf)> ( accessed on 14 th June 2020)

<sup>4</sup>The constitution of Democratic socialist republic of Sri Lanka 1978, c3. Available at: <<https://www.parliament.lk/files/pdf/constitution.pdf>> ( Accessed on 13 th June 2020)

or such other group having disadvantage owing to by notification,”<sup>7</sup>

“child who is in the weaker section” implies a child belonging to that kind of parent or guardian whose annual income is lower than the minimum limit specified by the appropriate government, by notification.<sup>8</sup>

Street children can be included in to above category which is the group of disadvantaged and the group of weaker sections .mentioning that group in the act prevents the violation of right in this unprivileged category like street children in the society. And also by article 31 of this act provide the section for protection of rights of children. Based on the state commission for *protection of child rights Act 2005*. So this acts and section helps people to prevent the violation of child rights and protect them.

It is clear that the Indian government has a very rich legal system to protect the right to education and the right to health if the country, even though they did not directly express the street children in some situations they are impliedly mentioned the street children category in their constitutions and other acts. So compared to the Sri Lanka, India has a very rich legal systemsafeguarding the child rights. So the author recommends that this sections and the ordinances like right to education ordinance should trace to the Sri Lankan legal system too. Because in Indian constitution also there is right to education included and in Sri Lankaconstitution it is not included and it is only governed by the right to equality. But under theright to equality section they do notmentioned the term education or the street children. And also in Indian constitution it is provided the right to life in section 21 but in Sri Lankan constitution it is not provided the right to life. So according to that we can consider India has a very rich legal system than the Sri Lanka.

#### IV . CONCLUSION

Street children are the children who are severely deprived and violate their rights. In this research author discuss about the right to education of the street children. Because of the poverty, lack of educationand unawareness thesechildren are neglected and severely violate their rights. street children’s child rights are governing by the constitution, penal code and some acts andlike ordinances children and young person’s ordinance education act etc. In the Sri Lankan constitution section 12 described about the right to equality, and under the section 39 of children’s and young person’s ordinance state about the discrimination when children are entering to the schools, and under the articles of 43,45 and 47 of education ordinance described about the need of children to go to school and it is compulsory and it is also provide the section for the fines and punishment they are imposed for the parents

<sup>7</sup>*Right of children to free and compulsory education Act, India, (2009).c1.*  
Available  
at;<[https://www.tiss.edu/uploads/files/The\\_Right\\_of\\_Children\\_to\\_Free\\_and\\_Compulsory\\_Education\\_Act\\_2009.pdf](https://www.tiss.edu/uploads/files/The_Right_of_Children_to_Free_and_Compulsory_Education_Act_2009.pdf)>( Accessed on 14<sup>th</sup>June 2020)

<sup>8</sup> Ibid

who prevent children from going to the school. But the issue is they are not directly address them to the street children. So because of that author thinks, it is a big reason for violation of right to education and the right to health of the street children. Every human is a resource for a national growth. Developing a child who is capable of contributing to the national growth is a important matter. For this purpose safeguarding their child rights and protect children is a prominent thing. Since street children are neglected part of the society, the possibility of turning them in to criminals is higher. In this study author’s opinion is society and laws of the country should give better concentration on this street children and their security. The one of government responsibility is safeguarding their rights and ,ake them to better citizens in the country who can give contribution to national growth in different pathways.

#### V. RECOMMENDATIONS

considering the circumstances and knowledge, the author acquired by the this study recommendations can be mentioned as follows;

- In society we can see many street children in the street and we heard in many situations they have involve to many crimes and bad thing like drugs and other harmful things. And to the other side there are people who involve street children to their crimes and used to begging also. Robberies, drug trafficking, prostitution are main crimes the street children are involve with, so considering these facts theauthor recommended that, there should be an act completely for street children, and protecting their child rights and imposing some punishments to the offences and also imposing fines and punishments to the people who used them for crimes and begging.
- Powerful economic rights should be implemented. Mostly street children percentage is increased due to the poverty of them. So the government and NGO should implement some economic rights and should implement some laws with regard to the right to housing, right to adequate standard of living. So under that right, the government should make some program for the street children and their parents to get some income.
- Powerful social rights should be implemented. Street children are children who are socially neglected. Because of the poor financial status of them, socially also neglect among the other children. This neglect will effect to their personality also.
- Right to education should include to the constitution. Right to education is an important right in the country. But it is not included in the constitution and because of that this right is violate in the less privileged children like street children. As an Indian constitution, Sri Lankanconstitution also should include the right to education to the constitution.
- Right to education act should be implemented. India has this act and it mentioned the term disadvantage



groups and low income children group. Even though it is not directly address to the street children. Since the above terms it is impliedly address the street children. So Sri Lanka should also have the right to education and it should address the street children and should include the remedies for the poor children who can't afford the school expenses like uniforms, shoes and stationeries.

- Implement street children's rights authority to protect the street children's rights. street children subject is a vast area more than people thinks; street children are depriving many rights which is deserved by them. And because of the people in the society, who are involve them to many things like crimes, robberies etc. there many possibilities to go them wrong side. So the authorities should be protecting them.
- Conduct legal awareness program to them, to know what rights they are entitled for. Because of the lack of knowledge and information, they violate street children's child rights.
- The government and other institutions should make programmes for make street children a better person who can contribute to national growth of the country.
- Society should highly concentrate on the protection of right to education of this unprivileged kids. Opening separate vocational, technical and other skill's developing centers will be more effective to uplift the situations of street children and to make them capable to give the contribution to national growth.
- Since children are the future of the nation, the law making institutes should enforce rigid punishments and fines for the violation of child rights offences.

#### ACKNOWLEDGEMENT

I would like to extend my sincere gratitude to my parents and friends who assisted me in completion of this research.

#### REFERENCES

- [1] *Convention on the right of the child* [online] [accessed on 13 th June 2020] Available at: <<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>.
- [2] *Constitution of India (1950)*.p3 [online] Available at: <[https://www.india.gov.in/sites/upload\\_files/npi/files/coi\\_part\\_full.pdf](https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf)> ( accessed on 14 th June 2020)
- [3] *constitution of Democratic socialistic republic of srilanka 1978*,c3. Available at: <<https://www.parliament.lk/files/pdf/constitution.pdf>> ( Accessed on 13 th June 2020)
- [4] *Children and young person's act (1956)* [online] Available at: <[http://hrlibrary.umn.edu/research/srilanka/statutes/Children\\_and\\_Young\\_Persons\\_Ordinance.pdf](http://hrlibrary.umn.edu/research/srilanka/statutes/Children_and_Young_Persons_Ordinance.pdf)> ( accessed on 13 th June 2020)
- [5] Neranji wijewardane, chararavisan kasenarathne (2013) street children in Colombo; what brings them to and sustains them on the street? *Sri lanka journal of child health [online]* Available on: <[https://www.researchgate.net/publication/263430060\\_Street\\_children\\_in\\_Colombo\\_What\\_brings\\_them\\_to\\_and\\_sustains\\_them\\_on\\_the\\_streets](https://www.researchgate.net/publication/263430060_Street_children_in_Colombo_What_brings_them_to_and_sustains_them_on_the_streets)>
- [6] *Penal code of Democratic socialistic republic of srilanka (1883)* [online] available at: <<https://www.lawnet.gov.lk/1948/12/31/penal-code-3/>>
- [7] *Right of children to free and compulsory education Act, India, (2009)*,c1. Available at: <[https://www.tiss.edu/uploads/files/The\\_Right\\_of\\_Children\\_to\\_Free\\_and\\_Compulsory\\_Education\\_Act\\_2009.pdf](https://www.tiss.edu/uploads/files/The_Right_of_Children_to_Free_and_Compulsory_Education_Act_2009.pdf)> ( accessed on 14 th June 2020)
- [8] *Sri Lanka Education Ordinance 1939*. P3. Available at: <[http://www.commonlii.org/lk/legis/consol\\_act/e381147.pdf](http://www.commonlii.org/lk/legis/consol_act/e381147.pdf)> ( Accessed on 13 th June 2020)
- [9] *The constitution of Democratic socialistic republic of srilanka 1978*,c3. Available at: <<https://www.parliament.lk/files/pdf/constitution.pdf>> ( Accessed on 13 th June 2020)
- [10] Wijewardane BVN. (2008) Deviant behaviors of street children with special reference to Colombo fort and pettah *Ceylon medical journal*
- [11] Yeoh E. Chu K. (2012). Literacy, Education and Economic Development in contemporary china. *SSRN, [online]* Available at: <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2207559](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2207559)> [Accessed 5<sup>th</sup> June 2020]