

4

Constitutional Guarantees vs. Ground Realities: The Legal Struggle for Universal Education in India

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ABSTRACT

“Education is the key that unlocks the golden door to freedom.” Brightly said by George Washington Carver, this research paper deals with the study of educational rights guaranteed to the children, education is considered as one of the most powerful tool which can develop create and analyse the dynamic changes in the society, it is impossible to exaggerate the value of education for kids. It is the foundation of empowerment, giving young brains confidence, knowledge, and skills. Children are empowered to create a better future through education, which also dismantles barriers and fosters critical thinking. Invest in education to create a prosperous society with endless potential. The foundation of critical thinking is education. It gives them the tools they need to analyze, assess, and resolve issues on their own. Education equips kids with the critical thinking abilities they need to make wise decisions and deal with the complexity of the world. it ensures Cognitive development is greatly influenced by the formative years of education. A child's cognitive talents are stimulated by exposure to a structured learning environment, which improves language competence, memory, and problem-solving ability.

INTRODUCTION

Every child has the fundamental right to an education, which is crucial to their development. It is impossible to overestimate the value of education since it helps kids develop the values, information, and abilities needed for their social and personal growth. However, millions of children around the world continue to be denied the opportunity to receive an education, even though it is acknowledged as a fundamental right. Children's

Keywords

Legal Education, Cognitive Development,
Empowerment, Critical Thinking, Legal Rights.

¹ Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors. 1993 AIR 2178

² The Constitution (Eighty-Sixth Amendment) Act, 2002, available at: https://www.education.gov.in/sites/upload_files/mhrd/files/upload_document/amend86.pdf (last visited on June 21, 2024)

³ The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009)

⁴ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016)

whole development and progress depend on their right to an education. Children who receive an education are given the values, abilities, and knowledge needed to live successful and meaningful lives. Additionally, it gives individuals the ability to exercise their rights, make educated decisions, and take part in community development. Additionally, education is a potent instrument for advancing gender equality, lowering poverty, and opening doors for sustainable development. An estimated 46 million children aged 6 to 18 do not attend school (Source: Unified DISE 2016-17 and RGI Census Population Projection 2016). Many kids never had the opportunity to go to school, while a number of others left for a variety of reasons, such as being forced into marriage or working as child labor. This is the harsh reality that still has an impact on children's development. Children who do not attend school are especially susceptible to early marriage, human trafficking, sexual abuse, and economic exploitation. In India, the coronavirus epidemic made matters worse for children's education by forcing 1.5 million schools to close as a result of the lockdowns that followed. UNICEF also emphasizes that 247 million people were affected.

HISTORICAL BACKDROP OF THE EDUCATIONAL RIGHTS

The constitutional approach to the educational rights has been the directives for the state to overspread early age education till the age of six years. Alarming with the sensitivity of human rights protection, different social and legal conflict arose in the society violating educational rights such as capacitive fees, reservation, etc. Thereafter cases like Unnikrishnan¹ and Mohini Jaini has created a revolution in the glory of educational status in India. The legislative action has been prudent enough under the directions of judiciary to pass 86th Constitutional Amendment² and inculcated severe changes in the Constitution of India. The fundamental right to education created an indispensable obligation

upon the state to protect the rights of the citizens guaranteed under Article 21A. Alongside, the special³and procedural⁴laws have been enacted in conformity to the fundamental rights to education and assistance towards care and protection of children in distress situation. In these two decades of constitutional safeguards to right to education, the educational rights have been escalated considering the socio-legal position of the children. The educational right exercised by the children has been inversely proportional to the vulnerability, partly recognized by our developing nation. The present intervention would be dealt with the educational status of the street children in India. The term “street child” has been defined in the 2019 Bill⁵ includes a child who is orphan, neglected or abandoned by parents surviving upon early age labour to earn their livelihood. The global definition⁶ of “street child” has been developed in 1980’s classified the children into three sections which are child who worked on the street and lives with the family; child who lives and worked on the street and maintain familial ties; and child who subsists on their own earnings on the street and abandoned by their families. The invisible vulnerability of the street children has not yet been the legislative concern which clearly depicts in no specific laws towards their protection and development.

RECENT REPORTS OF THE EDUCATIONAL SECTOR OF VARIOUS STATES

India is home to more than 55.7 crores children below the age of 18 years which represents 39% of the total population⁷. The UNFPA has declared India is the largest youth population of the world and would continue up to 2030 and thereby experiencing a “youth bulge”⁸. The total urban child population⁹ estimates to 12.8 crore which is 34.1% and 27.2% of the total urban population and child population in India. The total children in the urban areas of the targeted states of the capital cities in India have been graphically reproduced herein under:

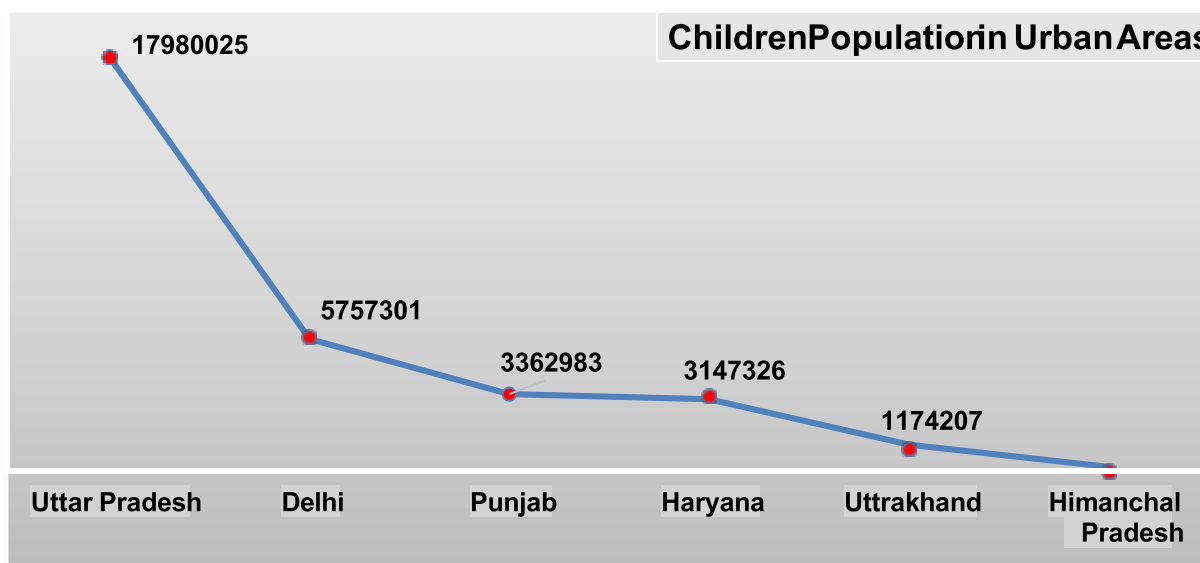
⁵ Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2014, Press Information Bureau, available at: <https://pib.gov.in/newsite/printrelease.aspx?relid=103949> (last visited on June 22, 2024)

⁶ UN General Assembly, Report of the United Nations High Commissioner for Human Rights on the protection and promotion of the rights of children working and/ or living on the street, A/HRC/19/35 (June 20, 2024)

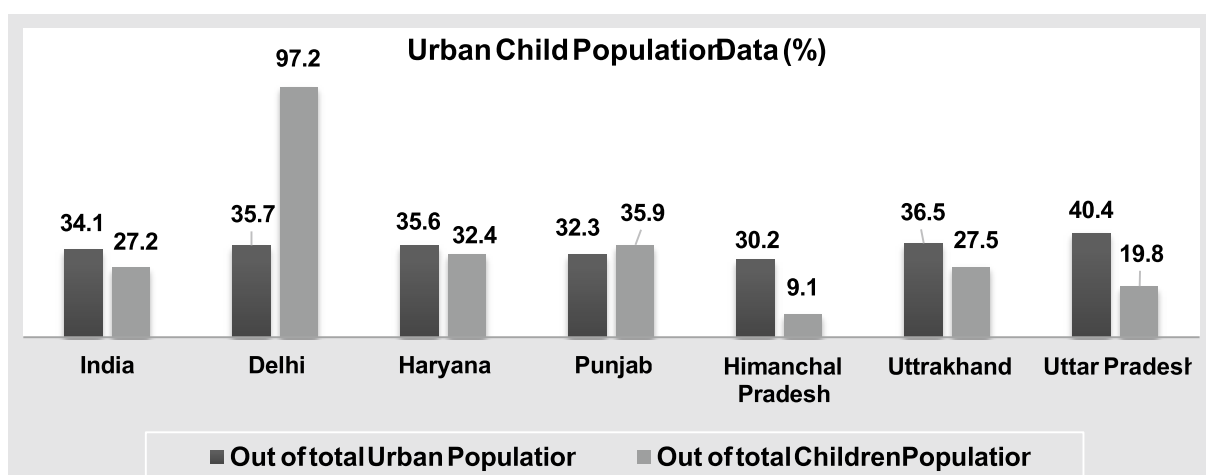
⁷ Government of India, “Children in India 2018- a Statistical Appraisal” 1-16 (Ministry of Statistics and Programme

⁸ Adolescents and Youth, available at: <https://india.unfpa.org/en/topics/adolescents-and-youth-8#:~:text=India%20has%20its%20largest%20ever,that%20will%20last%20till%202025>. (last visited on June 23, 2024)

⁹ Census of India, 2011



There is a shift rise of urban population due to industrialization which eventually increases the urban child population. The data of the child population in the state of the targeted capital cities has been graphically represented herein below:



The street children are subject to innumerable challenges¹⁰ concerning their rights protection and the state being silent upon the nation-wide intervention to secure their societal position. The educational status of the street children has been the major point of negligence which must be the subject-matter of governmental obligation. In the last three financial years, the school enrolment ratio¹¹ has been increased at the primary and upper primary level which has been shown below in the tabular representation:

Year	Primary (%)	Upper Primary (%)	Secondary (%)
2019-20	102.7	89.7	77.9
2020-2021	103.3	92.2	79.8
2021-2022	103.4	94.7	79.6

Source: Unified District Information System for Education (UDISE)

10 Nilika Dutta, “Street Children in India: A Study on Their Access to Health and Education”⁹ International Journal of Child, Youth and Family Studies 69-82 (2018)

11 Supra Note 14

12 Street children: The neglected pathology, available at: <https://www.orfonline.org/expert-speak/street-children-the-neglected-pathology> (last visited on June 25, 2024)

13 Supra Note 9

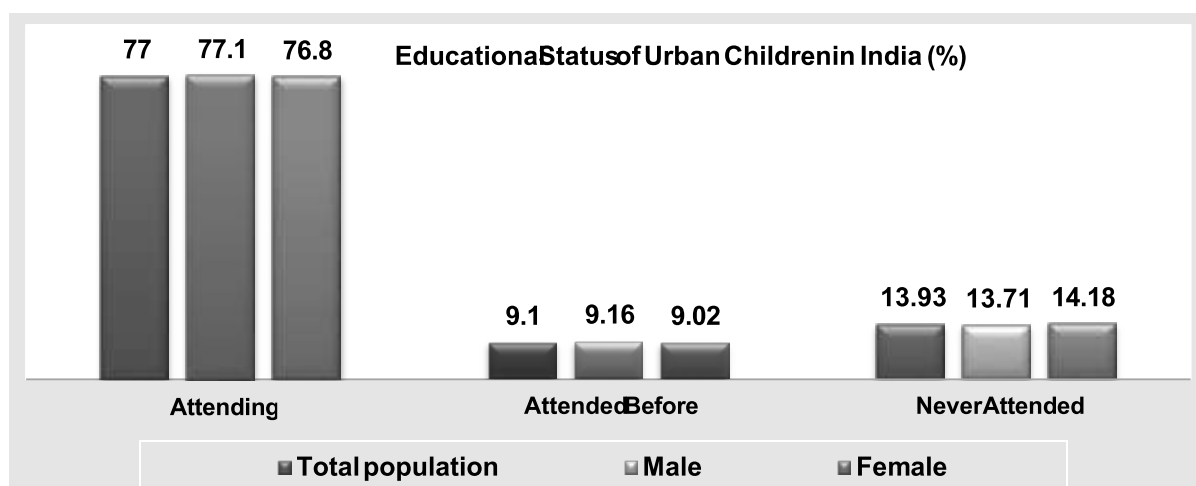
14 ibid

The various schemes concerning educational rights has been functional and implemented at grassroots level in consistent with the law of the land such as Samagra Shiksha, Kasturba Gandhi Balika Vidyalaya, PM Poshan, etc. The implementation of governmental actions has lowered down the rate of school drop-outs¹¹ at the primary level but a shift-rise at the upper primary level which is reproduced herein below:

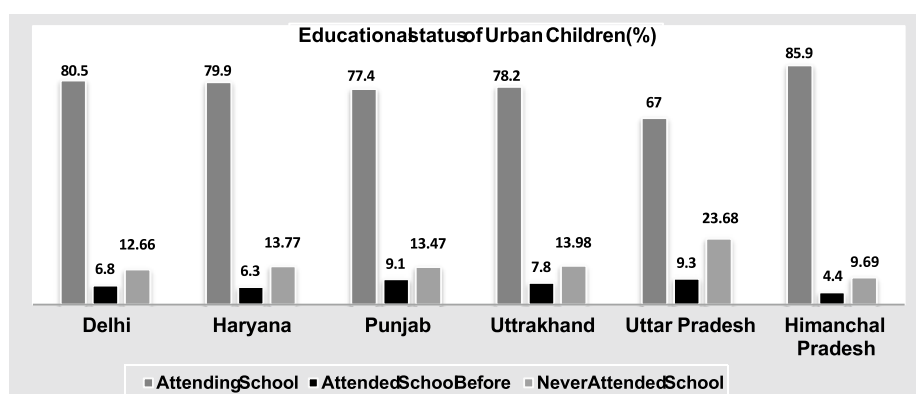
Year	Primary (%)	UpperPrimary (%)	Secondary (%)
2019-20	1.5	2.6	16.1
2020-21	0.8	2.3	14
2021-22	1.5	3	12.6

Source: UDISE

There has been no proper state intervention upon the statistical overview of street children in India. The 2000 UNICEF study states there are approx. 18 million street children¹² which are 4.05% of the total child population in India. The educational status of urban child has been categorized in three phases are as follows children are attending school; have attended school before/ dropped-out; and have never been to the school. The graphical representation¹³ of the education status of the children in urban region in India reproduced herein under:



The educational status of the urban children in the targeted geographical region of the present study reveals that considerable number of children has never been to the school. The graphical representation of the educational status of children in urban areas¹⁴ has been reproduced below:



The last published NFHS-5 data¹⁵ reveals the educational status of the children in urban and rural area vide various indicators based on age, sex, and other factors. The data shows the less enrolment into education by the both sexes in rural area in comparison to urban area, which is reproduced below:

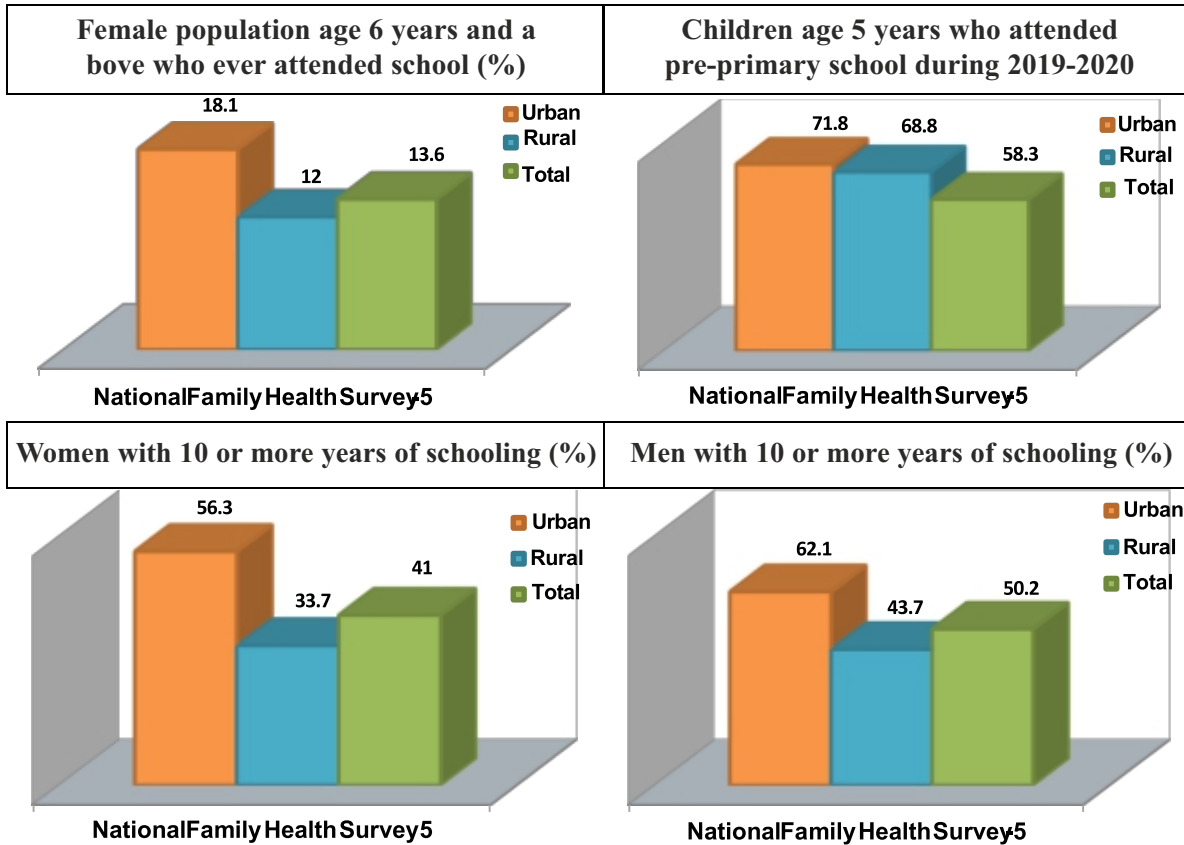


Fig. 1: Educational Status in urban and rural areas

Role Of Government And Non-government Agencies In Educational Status Of Street Children

Children's right to an education is a fundamental right that is safeguarded by a number of national and international laws. It is essential to their overall development and progress and plays a significant role in shaping the future course of our civilisation. Therefore, ensuring that all children have access to inclusive, free, and high-quality education is the responsibility of every government. We as individuals may contribute to the advancement of this cause by endorsing educational initiatives and advocating for every child's right to an education. The government and non-governmental organisations have focused more of their attention on the street children's educational status, which has been a murky area. Poverty, health issues, parental neglect, abuse and violence, lack of resources, malnourishment, emotional instability, exploitation, and other socioeconomic factors are among the things that street-connected children deal with. Their rights under Article 21A of the Indian Constitution are hampered by the street children's susceptibility to a number of vulnerabilities that jeopardise fundamental child rights, including begging, child marriage, early labour, gender-based discrimination, abandoned children, substance abuse, trafficking, delinquent characteristics, etc. This segment of society concentrates on the needs and desires necessary for the advancement of education, and it is not limited to a single state; rather, it is encroaching on numerous states. The reports that follow offer quantitative information regarding the state of education and these children.

a) Save the Children “Life on the Street: Street Children Survey in 5 Cities: Lucknow, Mughal Sarai, Hyderabad, Patna and Kolkata-Howrah”: Children in street situations are defined as children who spend the majority of their time on the streets, either living there or for their livelihood, with or without family. A census conducted in the five cities of the nation capturing over 84563 street children and the detailed study had been pursued over 3-5% of census population in every city (except Mughal Sarai). The sample survey of the study includes critical findings such as highest proportion of street children aged less than 3 years (14.4%) and 6 years (32%) were found in Patna. The social-legal positions of the street child encountered during the survey includes rag-picking, slum displacement, poverty, lack of familial ties, street vendors, drug-addiction, health-hazards, unhygienic conditions, abuse, etc. The study recommends for specific policy framework for the street children; mapping of street child population through national intervention; developing national model towards education enrolment of street children at grassroots level; etc.

b) Zutshi, Bupinder & UNESCO, & UNDP, (2000) “A Situational analysis of education for street and working children in India”: The project has focused upon the root cause behind the menace growth of street child in India, where the possible reasons could be industrialization and urbanization. The legislative measures and field based actions have been foreseen in the research project, where the Ministry of Labour has identified 93 districts of the country for the operation of NCLP Scheme targeting 1,00,000 beneficiaries throughout the country by providing non-governmental education along with other basic necessary. It also ensures the supports of 103 NGOs in the 23 million plus population cities of the country. The study indicates that, the magnitude of drop-out children, in the surveyed cities was 2.5 million within which nearly 68 % were street children. The research project

recommends in increasing the budget allocation for elementary education at the level of 3 % to the total GDP to show its commitment for achieving education for all at the earliest; and accountability and regular monitoring of the NGO's must be made an integral component of funding for educational programs under various government schemes.

c) PwC and Save the Children, “Forgotten Voices: The World of Urban Children in India” (2015): The Census of 2011 has given specific figure of about 13.7 million slum households in India living in dwelling situation and the shift-rise in urbanization of poverty has ranged from 18.7 to 26.8 %. It also prescribes the increase of urban child population by 12.8% which depicts a major shift of population from the rural to the urban region results in creation of urban slums. The study also reveals that 27.4% of child in urban areas are subject to school enrolment. The intervention in Delhi also states that the “never attended school child” represents 31.5% of the total number of child population which varies for a wide range of reasons such as underage, financial scarcity, negative opinion of parents/ caregiver towards educational rights, etc. The report showcases that the disadvantaged group of children including street children are subject to distress situations such as malnutrition, lack of educational rights, and other safety concerns, etc. The study made recommendations towards pursuing national census on street children; developing mechanisms to restore the drop-out children back to the school; enrich public policy upon hygienic supply of water and sanitation, period survey on health indicators upon urban children, etc.

The National Education Policy (NEP) 2020, which calls for a thorough overhaul of the educational system, including its governance and regulation, is the subject of the most recent amendments in the field of education. To provide an inclusive and efficient educational system, the Department of School Education & Literacy is still dedicated to

helping students achieve higher learning results. In keeping with this pledge, the Central Government modified the regulations under the Right of Children to Free and Compulsory Education (RTE) Act, 2009, as amended by the RTE (Amendment) Act, 2019, by publishing a notification (G.S.R. 777(E)) in the Indian Gazette on December 21, 2024. Significant modifications are introduced in the revised regulations, known as the Right of Children to Free and Compulsory Education (Amendment) Rules, 2024, to ensure equity and inclusion while fostering student learning. A revised "Detention Policy" that applies to pupils in Grades 5 and 8 in schools founded, owned, or managed by the Central Government or the administrator of the Union Territory which lacks a legislature is introduced in this modification. According to this, a student will receive further teaching and have the chance to retake the exam within two months of the results being announced if they are unable to achieve the promotion requirements following the yearly exam. The student will remain in the same grade if, even after the re-examination, they are unable to achieve the promotion requirements. The class teacher will actively interact with the student and parents throughout this time, offering tailored advice and implementing focused interventions to close any learning gaps. The amendment upholds every kid's right to an education by reaffirming that no child may be dismissed from school before completing elementary school.

CONCLUSION

Education is a particularly effective strategy to support street children because it occurs where they live. Education is the process of assisting street children in improving their knowledge, skills, and attitudes in specific areas where they are in need. GSK provides street children with an education program that is flexible, aids in rehabilitation, and addresses their social, mental, and physical requirements. It also helps the children become self-sufficient, accountable, and successful adults.

Around the world, education is recognised as the foundation of human development and lifelong learning, as well as an essential element in the fight against poverty and the advancement of progress in all areas of life. It directs development in every aspect of life. Globally, education is acknowledged as the cornerstone of human growth and lifelong learning, as well as a vital component in the struggle to combat poverty and advance progress in all spheres of life. It guides growth in all area of life, and it is impossible to overstate the advantages of education for homeless kids. Street children can escape the poverty and exploitation that keep them there by getting an education, which also gives them hope for a brighter future. In conclusion, all children, including those living on the streets, should have access to education as it is a fundamental human right. While GSK's commitment to give street kids a basic education is a positive start, more work is required to close the educational gap with homeless kids. Since a decent education offers hope and a way out of poverty and exploitation, it is our collective responsibility to ensure that all children, regardless of their social status.

The recommendations/ Suggestions are as follows:

- a. Need of nation-wide interventions in the statistical analysis of invisible group of street children.
- b. The vulnerable situation of the street children must be addressed through enacting specific legislations towards the rights protection and development of the street children;
- c. The state must develop effective strategic mechanism towards increasing the school gross enrolment ratio of the street children in conformity with the constitutional safeguards of right to education.