



# INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

## Rights of a Schoolchildren in India

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### Abstract

The dynamism of social problems encourages innovational solutions. This paper looks at understanding the rights of children and addressing them through a novel perspective i.e., through the perspective of legal recognition. Thus, we understand child rights and their violation in the context of one of the most dominant institutions of the State i.e., the school. The paper thus, conceives the creation of a legal categorization of 'schoolchildren' which will help the state in not only formulating effective relevant policies but also in conceiving judicial safeguards to check their violation.

The paper first questions the need for such a categorization, dwells into the instances of violation of rights of the schoolchildren, takes a general view of the specificity of these rights and suggests on their better implementation.

### Introduction

The concept of rights has been the most debated one in modern era. Its understanding has been influenced and limited by its application in different cultures, societies, times and space.

The recurring questions of children rights and their violations have compelled on us a time to relook at the policies for safeguards and provisions applicable by law. The government uses legislative delegations and policies to address the basic underlying issues of childhood like malnutrition, prejudicial infanticide, lack of education, mental and physical health yet the burden of child abuse and violation increases by the day. The developing countries like India can not afford the luxury of according a higher amount of budget on education and higher academic development which is a sad truth. Yet, the buck should not stop at the government. The Judiciary takes the initiative in ensuring penal action and disciplinary steps in the recognition of legal rights. However, this does not guarantee a permanent solution to question of child rights. One of the gravest concerns is, the violation of rights at school.

This paper will strive to provide a resolution for the issue of rights of schoolchildren, their importance, their violation, and remedial suggestions.

### A. Identification of the Research Problem:

1. What are the differences between the understanding of rights of a child and a school child?
2. How can the institutional approach be useful in locating the rights of a schoolchild?
3. Can the rights of the schoolchild be defined?
4. In the Indian context, how can we observe the violation of the rights of the schoolchild?

### B. Research Objectives:

1. Realizing the need of protection of the rights of schoolchildren
2. Emphasizing the formulation of policy and laws for the protection of their rights.

### C. Literature Review:

The United Nations Convention on the Rights of the Child pioneers in upholding the rights of security, protection and welfare of children. One of the most widely ratified treaties, it guides policy formulations for children standing on four main principles namely the right to life & healthy development, the right to best-interest, the right to non-discrimination & the right to participation. The Geneva Declaration amongst other policies mention the right of a child to normal development, to earn a livelihood & protection against exploitation in all forms. The UN Declaration of the Rights of Child stresses on the need for love and understanding so that the child grows in the care & responsibility of his/her parents, & in an atmosphere of affection & moral & material security.

‘Vulnerable Children & the Law’ edited by Sheehan, Rhoades & Stanley bring to us the various problematic issues concerning child rights like child trafficking, illegal immigration, custody, child abuse, incest etc. Robert Hitchcock makes a passing reference to the issues of Batwa schoolchildren namely discrimination by teachers & classmates and corporal punishment while talking about the issues faced by indigenous children from Central and Southern Africa. Thakral & Asthana in ‘Children’s’ Rights in Litigation’ highlight the growing influence of United Nation Convention on Child’s Rights on judicial judgments in India. Bringing a fresh perspective to the discussion, Peter Newell pleads to end corporal punishment of children in ‘Revisiting Children’s Rights’. However, most of the literature perceives the subject as ‘children’ rather than ‘schoolchildren’ lacking a better analysis of problem recognition and policy-making.

The National Commission for Protection of Child Right's 'Guidelines for Eliminating Corporal Punishment in Schools' is a positive intervention in addressing the issue, tackling at a molecular level. It even advises that teachers should not be recognized in *loco parentis*. (Teachers should not take on the role of parent). This is in sheer contradiction to the assumed, revered Indian values of implying the teacher as greater than parents, assuming an unquestionable, authoritarian, divine, position in the child's life.

The National Human Rights Commission's document on 'Children in India and their Rights' authored by Dr. Savita Bhakhry makes an investigation of the historical evolution of children's rights in India. It elaborates the NHRC'S contributions towards the protection of child rights.

- Why talk only about school children & not all children in general?

In context of rights, we fail to understand the importance of institutions in guaranteeing or violating rights.

This was the same rationale used behind the Vishakha guidelines which covertly distinguished between sexual harassment at workplace and elsewhere, thus giving legal recognition to the category of 'working woman'. Thus, the place of work, the timings, the employees involved etc. have been elaborated in the guidelines, impacting judgments & policies for working women.

This recognizes the importance of the institution of 'the workplace' as a separate entity, crucial in the existence of rights of woman.

Thus, this institutional approach needs to be applied to the creation of a new target entity 'the schoolchild'. Recognizing the rights of a child vis-à-vis the school implies the guarantee of a charter of rights & their legal awareness amongst schoolchildren which is a crucial need of the hour.

- What happens when rights are addressed to children universally and not 'schoolchildren'?

The major factor that we must consider, behind the distinction of this nomenclature is the abstraction of responsibility & authority. For example, when we talk about ending corporal punishment of children, we look at all the stakeholders, namely the parents, the relatives, the bullying peers, the school authorities, religious or community leaders etc. Locating violation and responsibility in case of violation becomes a tedious task, due to the implied consent and social connivance of the act.

On the contrary, addressing our subject as a 'schoolchild' guarantees the outright imposition of moral, ethical & legal responsibility of the child on the particular school. On an average, a schoolchild spends anywhere between five to six hours in school. Extra classes, gym classes, sports add more four hours making almost ten hours, implying that in a week, a child spends almost sixty to seventy hours at school. This is quite a phenomenal period warranting legal attention. Thus, an explicit legal, governmental categorization of a 'schoolchild' becomes crucial in the explanation of rights.

Another pertinent question is what about the hours that the child does not spend at school? What about those children who go to coaching classes for hours, gymkhanas, hobby classes and elsewhere? A limiting

factor here is that these institutions are not universal. We must consider that, not all children go to the gym or hobby classes or private tuitions. In the Indian context, these rights and issues are dealt under the Indian Penal Code and issue-specific laws like Prohibition of Child Marriage Act, 2000, Juvenile Justice Act, 2015, Child Labor Act, 1986, Probation of Offenders Act, 1958, POCSO Act, 2015 etc. However, schools are universal institutions which can be easily brought under the purview of specific legislations.

- Why talk about rights of schoolchildren and not rights of students?

The word 'student' implies a strong moral connotation especially in ancient Indian understanding. A student remains a student for the whole life. A student can be 7 years old or 81 years old. Thus, it would be ambiguous category to analyze. We can eliminate this ambiguity in case of a 'schoolchild'. With respect to the institution, school is the primary focus here. Child implies any person below 18 years in India. This clarity of definition can help us in governmental interventions.

- Utility of the Institutional Approach

Institutional Approach studies political institutions and structures like the legislature, the executive, the judiciary etc. Institutions have the capacity to determine the outcomes and political behaviors, the actors involved, influencing their decisions and consequences. The unit of analysis is the institution; thus, the major concern is the formal and informal side of institutions.

This approach is chosen for the vitality of institutions and how they empower, restrict the stakeholders, nudging them to act according to 'prescriptive rules of appropriateness' according to March and Olsen.

School is one of the most important institutions of the State which mirrors the State at a miniscule level. The child learns her first lessons of formal interactions, social behavior, and judgments in the environment of the school. Thus, for a child, the first formal identity is derived through the interrelationships at school which as an institution has a tremendous influence in the child's relation with the society and the resultant impact on the State.

### **Violation of the Rights of schoolchildren in India**

A drunk, abusive school teacher from Andhra Pradesh was suspended after his video went viral on social media. A 4-year-old student was thrashed by his teacher in Hyderabad for being 'mischievous'. A class 5 student died after being beaten in the class by her teacher in Telangana. A 5<sup>th</sup> standard boy from Purulia fell ill after being beaten in the class by his teacher, eventually succumbing to his injuries.

Anuj, a 12-year-old student was caned in the class for being 5 minutes late, who later got paralyzed and was admitted to AIIMS Delhi. A class 2 student requested the cops to punish his teacher over physical punishment. A report by Agrasar Group, mentions that 80% of marginalized students face punishments like these in schools. A lot of them are beaten up by their teachers regularly. Two boys were paraded naked for stealing a food item from a shop in Thane. A 11-year-old boy was beaten to death in Uttar Pradesh for stealing a pencil. A 14-year-old was made to drink urine as punishment.

A Dalit student is forced to sit on the ground while the upper caste classmates eat at the table during lunch. Mansi, a Dalit student from Class 2 was beaten up brutally for refusing to clean the carcass of a puppy at school. In fact, students from the Dalit communities are entrusted with the tasks, considered menial and dirty like cleaning toilets. This caste bias is not just limited to the teachers. In Uttarakhand, students refused to eat mid-day meals cooked by a Dalit cook.

The Right to Education Act, prohibits anyone from physically or mentally harassing a child. It further mentions rights of children in school, and a grievance redressal mechanism too. However, in spite of the law explicitly putting all the safeguards in place, the violation of the rights of schoolchildren continues.

### **Theory of Legal Recognizance**

One of the major reasons for the failure of these safeguards is the lack of awareness and legal caution amongst the students, teachers and parents. An effective solution to it would be upgrading the status of children to 'schoolchildren'. This concept is similar to the theory of Legal Persons in jurisprudence. The only contention here is children are already considered humans, as a legal community. Thus, there is an already existing community protected by the law. However, recognition by the law does not address the issues of vulnerability faced by the community which requires special attention. This recognizance is mandated for resolving vulnerabilities of the situation the child finds herself in.

The higher judiciary has often used this methodology in environmental protection. For example, the Ganga River was given the status of a legal citizen to raise awareness and the fear of the law.

Elevating their status to 'schoolchildren would be equivalent to raising awareness of the rights and position amongst not only the children but also amongst the school authorities.

### **Rights of Schoolchildren**

Inspired from the Vishakha Guidelines, the rights of the schoolchildren can be explained in the following categories:

- **Definition:**

Any child below the age of 18 yrs. and enrolled in a school.

- **Right to Identity and Identification:**

A schoolchild will entail two specific identities, attributed to the state and the specific school. Thus, the general identity of a schoolchild would entail her to all the rights from the State i.e., the Government as well as the specific school enrolled. Thus, the identification of the schoolchild would be maintained with the school as well as the state and annually updated.

Provision of schoolchild cards can aid the state in keeping records of literacy, dropouts, causes of dropouts and suitable schemes can be designed to encourage these schoolchildren to complete their education. In

case of migrant labourers, the schoolchildren would benefit immensely from the State records. This can also help the State in keeping the children in check from indulging in any anti-social activities.

### Right against discrimination based on caste, class, community, religion, gender or race

The schoolchild shall not be discriminated against based on her class, caste, community, religion, gender, ancestral occupation, sexuality, physical appearances, physical and mental disorders, etc. The school authorities shall be liable for the violation of this right facing criminal action.

- Right to protection and nutritional care

The schoolchild shall be guaranteed freedom from physical and mental abuse in the classroom and school premises. The teacher shall not use pain, humiliation, physical restraining or any such corporal punishment to discipline the schoolchild. Further, the schoolchild shall be guaranteed appropriate access to lunch breaks, recess and provision of nutritional food during the school hours. The governmental initiatives like Sarva Shiksha Abhiyaan, Mid-Day Meal Schemes which provide free nutritious meals to schoolchildren has been an encouragement in this regard.

Comfortable seating, airy environment, availability of a playground, protective measures in case of untimely disasters like floods, COVID, has to be imperative in ensuring the continuation of classes. In case of online education, the number of hours has to be limited considering the mental health of the schoolchild and its physical implications.

- Right to educational advancement and development

The school has to ensure recruitment of qualified teachers who make efforts to provide education to the schoolchild through regular assessment, inclusive class activities like games and quiz, inclusion of destressing epistemology in the class through technology, encouraging sports caliber of the schoolchild through appropriate number of physical education classes etc. These ensure educational and overall development of the personality of the schoolchild.

Further, a provision should be made for encouraging the ethnic, traditional languages of the communities by introducing short credit courses to ensure that the schoolchild is not alienated from her culture or community. The extra-curricular activities in the school can facilitate this accordingly.

- Right to freedom from Mental stress and duress

The schoolchild must receive appropriate timely psychological counselling in the face of duress from exams, peer pressures, family abuse, etc. The State can make provisions for free counselling, linking schools for regular assessment. The schoolchild needs to be protected from all kinds of cybercrime, cyberbullying in case of online education.

The schoolchild must be time and again explained the proper safeguards to be undertaken while learning online. Proper online supervision needs to be done by the school authorities for their protection. These safeguards have to be provided to the parents/guardians for their effective application.

The Indian Government has helplines for child abuse like 1098 is a good example. However, these do not cover psychological counselling specifically for schoolchildren which is a necessity in the times of the pandemic. These times are even more challenging for schoolchildren due to the uncertainty of school exams, classes, depression and anxiety.

#### **D. Limitations and recommendations**

However, there can be some limitations in the implementation of the concept.

In a developing country like India, the government spends as less as 3 to 4 percent on education. Regulating schools and providing appropriate infrastructure to the last village would be a challenge. It would be unimaginable for a lot of schools especially in rural areas to come up with appropriate online infrastructure for smooth and safe online classes when basic facilities like drinking water, clean toilets are absent. Other challenges would be as follows:

1. To place the liability in case of corporal punishment on the specific teacher or the whole school authorities. A clear legal provision for assigning responsibility needs to be provided.
2. The police may find it challenging to monitor each classroom in case of a complaint of corporal punishment inflicted on a schoolchild. The school may threaten the students to not complaint or face expulsion.
3. Maintenance of records of every schoolchild with the state can be a cumbersome, time-consuming exercise. Digitalization of records would greatly help.
4. Provision of psychological counselling requires appointment of bonafide counselors which can be financially painful for a lot of economically weaker schools.
5. The biggest hurdle is convincing the schoolchildren of their rights and responsibilities. Rights in case of violation and responsibilities in case of recognition. The child may be mentally hammered with the thought of 'spare the rod, spoil the child' which prevents the child from complaining about violation of her rights at school.
6. Social prejudices based on caste, gender keep the schoolchild away from recognizing the discrimination against her. For example, a Dalit schoolchild may find it normal to lunch on the floor while her other upper caste classmates' lunch on the table. This internalization of discrimination hinders the schoolchild from complete realization of her rights.
7. A lot of burden falls on the teachers are faced with the herculean task of handling a class of 50-60 students. Now, the burden of paying attention to the children of the whole class will be shared by the teacher which would be mentally taxing.
8. In many schools, teachers often complain about non-completion of the syllabus, misbehavior of students in the class, in which case conduction of regular tests, class activities would be an uphill task. Teachers are not even adequately trained to deal with the issues like maintenance of discipline

in the class. Teachers must be encouraged to perform better vis-à-vis these goals through fiscal reinforcements and awards

9. There is lack of awareness regarding mental health issues amongst the school authorities. Lack of financial resources for appointment of counsellors further adds to the problem. One convenient solution would be tie-up of schools with non-governmental organizations. These would help in easing the burden of providing nutritional care, conducting extra-curricular activities, addressing mental health issues and social mobilization.
10. The Judiciary must take a strict stand against the violation of rights of schoolchildren, aiming at their legal protection.

### **E. Conclusion**

Changing times have brought to us the need of looking for new alternatives. The Judiciary has taken innovative measures at addressing problems of common concern. Legislative innovation should go hand-in-hand. School being the universal institution of a child's development becomes an undeniable, inseparable part of a child's existence. This identity must be legally appreciated and cherished. The Indian legal system has provided many answers to the varied issues regarding children's rights. Awarding the identity of schoolchildren will be a promising step in bettering their future.

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