



Human Rights and Child Rights: Rights Violations of Ragpicker Children in Cuttack City

Dillip Kumar Mallik

Junior Lecturer in Political Science, Dhenkanal Junior College, Dhenkanal, Odisha.

Date of Submission: 12-03-2021

Date of Acceptance: 27-03-2021

ABSTRACT -Human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all individual by virtue of their humanity alone. These claims are articulated and formulated in what we today call human rights, and have been translated into legal rights. Human rights are children's rights too. International human rights instruments recognize that children as well as adults have basic human rights. Children also have the right to special protection because of their vulnerability to exploitation and abuse. In November 1989 the United Nations General Assembly adopted the Convention on the Rights of the Child (the CRC). When child doing rag picking as their profession at that time it denial of all the rights of the children. Rag Pickers are those children we can find out them in railway stations, municipality areas, bus stands, industrial areas, garbage and household areas with having a heavy gunny bags and collected and sorted: plastic, paper, bottles, bones and metals that can be sold for money for their livelihood. The central puzzle of this paper is under the child labour (prohibition & regulation) Act 1986, rag picking was banned by the Government. Why children engage in rag picking work? The main objective of this paper to study and highlights main reasons of the violations of the rights of ragpicking children in cuttack city. The paper concludes with some suggestions that should be take positive measures to stop the violation of Human Rights of ragpicking children.

KEYWORDS: Child, ragpicker, Rights, Violation

I. INTRODUCTION:

This paper aims at theorising the rights of the rag pickers in India with special focus to Cuttack city of Odisha using a capability approach. This paper is divided into three parts. Part I being introducing one give brief outline of the study. The second part discuss about using Amartya Sen's and Martha Nussbaum's capability approach structure to understand the 'rag picker' rights and their

development. In adding, this paper examines the degree to which it will be justifiable, under capability approach, for international human rights law or national constitutions, to give special priority to children's rights. Third part of this paper based on data analysis, which collected from Cuttack city of Odisha where I mentioned how ragpickers human rights are violated. Then this article briefly concludes total discussion.

Man has to pass several stages of life out of these childhood is an important one. During the childhood period, a child unknown about what is society? What is right? Or what is work? Slowly they know about all these things through the interaction of their family members. But those children do not have parents or migrant children they do not know about these things in childhood. These children in childhood preferred some labourers and unskilled works for their livelihood. Sometimes we called them as child labours, rag pickers and many more. Child labour is a practice where children engage in economic activity, on part time and full time basis. The practice deprives children of their childhood, and is harmful to their physical and mental development. UNICEF estimates that India with its larger population has the highest number of labourers in the world under the 14 years of age. Rag Picker means a person who picks rags and other waste material from Municipality areas, streets, drains, garbage's, platforms and medical areas can sold money for livelihood. Child rag picker means a child engaged in this work.

CHILD RAG PICKERS: THEORETICAL PERSPECTIVE

The rights of the Rag Pickers as part of the broad rights discourse have assumed significance in contemporary times. The concept of child rag pickers appears to have under gone modification over time. The term child rag picker currently refers to those children who collect rags or recyclable



materials that can be sold for money for their livelihood.

In this part, the paper aims at theorising the rights of the rag pickers in India with special focus to Odisha by drawing on the understandings of the capabilities approach (CA) developed by Amartya Sen in economics and Martha Nussbaum in philosophy. Indian economist and philosopher Amartya Sen first articulated the Capability Approach in the 1980s, and remains most closely associated with him. In recent decades Capability approach emerged as a new theoretical framework about well-being, development and justice. It is generally understood as a conceptual framework for a range of normative exercises, including: (1) the assessment of individual well-being; (2) the evaluation and assessment of social arrangements; and (3) the design of policies and proposals about social change in society¹. In all these normative exercises, the capability approach prioritizes certain of peoples' beings and doings and their opportunities to realize those beings and doings (such as their genuine opportunities to be educated, their ability to move around or to enjoy supportive social relationships). This stands in contrast to other accounts of well-being, which focus exclusively on subjective categories (such as happiness) or on the material means to well-being (such as resources like income or wealth)². In this part, I argue that why children rights recognized as human rights, because every human being under capability approach, is entitled to respect for her full human dignity. In this context, a capability approach also explain, why it make sense for both Convention on the Right Of the Child (CROC) and various national constitutions to recognise a range of rights for the sensitivity both to children's welfare need and to children agency. According to Nussbaum, the proper way to operationalize the human capability approach is to define a list of central capabilities. Indeed, an important step forward to narrowing down the capability approach from a framework to a theory is the selection of a list of fundamental capabilities.

¹Sen, Amartya., (1989), "Development as Capability Expansion", *Journal of Development Planning* 19: 48-51

²Des. Gasper, (2002), "Is Sen's Capability Approach an Adequate Basis for Considering Human Development?", *Review of political Economy* 14 (4):435-461.

NUSSBAUM VIEW ON CHILDREN CAPABILITIES

Earlier my paper based on both sen's and Nussbaum's understandings on capability framework for the study of child rights in Odisha especially rag pickers in Odisha because Nussbaum and Sen have different goals with their work on capabilities, and have also different personal intellectual histories in which their work needs to be situated. After discussing both ideologies on capability approach, I think that Nussbaum's idea is more appropriate to my paper for the study of child rights because Nussbaum aims to develop a partial theory of justice, by arguing for the political principles that should underlie a constitution. Thus, Nussbaum enters the capability approach from a perspective of moral-legal-political philosophy with the specific aim to argue for political principles that a government should guarantee all its citizens through its constitution. To perform this task, Nussbaum develops and argues for a well-defined but general list of 'central human capabilities' that should be incorporated in all constitutions. As such, her work on the capability approach is universalistic, as she believes all governments should endorse these capabilities. Why I think sen's ideas is not appropriate for my paper because he was interested in the "equality of what?" question in the liberal-egalitarian literature, and argued that there are good reasons to focus on capabilities instead of resources or utility. On the other hand, Sen was doing some much more applied work on poverty and destitution in developing countries, in which he found some 'empirical support' for a focus on what people can do and be instead of the measures that were more dominant in development economics in the early 1980s. Finally, Sen was also working in social choice, the field which launched his academic career, and in this field axiomatic reasoning is the common language, that is, formal, mathematical reasoning, without too much distraction of the fleshing out of empirical details.

A LIST OF RELEVANT CHILDREN'S CAPABILITIES

According to Nussbaum, the proper way to operationalize the human capability approach is to define a list of central capabilities: i.e. 1. Life; 2. Bodily health; 3. Bodily integrity; 4. Senses, imagination and thought; 5. Emotions; 6. Practical reason; 7. Affiliation; 8. Other species; 9. Play; 10, control over one's environment. Nussbaum has specified this list in more detail in several of her further publications (Nussbaum 2000; 2002a; 2002b; 2003a). The list is always open for revision,



hence one needs to look at the most recent version of her list. Indeed, an important step forward to narrowing down the capability approach from a framework to a theory is the selection of a list of fundamental capabilities. In this section, I present the list of relevant children capabilities proposed by Biggeri (2004)³. This list captures the specificity of children and the generality among children as a group (no age and gender is taken into consideration). The capabilities on the list include all elements and no dimension that is relevant for the analysis in our case children well-being has been left out.

For the theoretical framework, he identifies the following list of children central capabilities. Note that the sign * means "in accordance with the age and maturity of the child".

1. **Life and physical health;** being able to born, being able to be physically healthy and enjoy a life of normal length
2. **Love and care:** Being able to love and being loved by those who care for us and being able to be protected *
3. **Mental well-being:** being able to be mentally healthy
4. **Bodily integrity and safety:** being able to be protected from violence of any sort
5. **Social relations:** being able to be part of social networks and to give and receive social support *
6. **Participation:** to participate in and have a fair share of influence and being able to receive objective information *
7. **Education:** being able to be educated
8. **Freedom from economic and non-economic exploitation:** being able to be protected from economic and non-economic exploitation *
9. **Shelter and environment:** being able to be sheltered and to live in a safe and pleasant environment
10. **Leisure activities:** being able to engage in leisure activities and undertake projects
11. **Respect:** being able to be respected and treated with dignity
12. **Religion and identity:** being able to choose to live or not according to a religion and identity *

³ Biggeri, M., (2004), "Capability Approach and Children Well-being", paper invited International Conference on 'Promoting Human Rights and Social Policies For Children and Women: Monitoring and Achieving the Millennium Goals', UNICEF-The New School of University.

13. **Time-autonomy:** being able to exercise autonomy in allocating one's time *

14. **Mobility:** being able to be mobile *

There are also some other reasons for that I adopted Nussbaum idea for the study of child rights. These are;

1. The first reason is that children's especially rag pickers are innocent and unmaturred. They don't have capabilities perform their functions. For their development, they achieved functions indirectly through their parents, society, state and government by the constitution.

2. The second reason is the transition from achieved functioning's to capabilities involves the process of choice, but as a child they don't have choice capacity for their development or welfare. That the choice process itself should be evaluated if we want to use the capability approach to judge individual advantage or social arrangements.

3. The third reason Nussbaum focus her work on capabilities as providing citizens with a justification and arguments for central constitutional principles that citizens have a right to demand from their government.

Nussbaum argues that the capabilities approach should not only include the capabilities of the people who are in need (typically children or elderly) but also the capability approach should endorse a theory of social justice where the subjects are not anymore only "fully cooperating members of society over a complete life". Earlier she mentioned government should guarantee its entire people through its constitution based on child capabilities⁴. India is home to the largest child population in the world. The Constitution of India guarantees Fundamental Rights to all children in the country and empowers the State to make special provisions for children. The Directive Principles of State Policy specifically guide the State in securing the tender age of children from abuse and ensuring that children are given opportunities and facilities to develop in a healthy manner in conditions of freedom and dignity. The State is responsible for ensuring that childhood is protected from exploitation and moral and material abandonment. Whereas the Constitution of India enshrines both in Part III and IV the cause and the best interest of children, insofar that⁵:

⁴Tommaso, Maria Laura Di., (2007), "Children Capabilities: A Structural Equation Model for India", *The Journal of Socio Economics* 36:436-450.

⁵Adenwalla.Maharukh, (2002), "Child Rights and Law: a guidebook for legal interventions ", Child line India Foundation (CIF), Mumbai.



❖ The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India (Art 14)

❖ The State can make special provisions for children, (Art 15 (3))

❖ Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law.

❖ The State shall provide 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 (Art 21.A)

❖ Article 23 prohibits trafficking of human beings and forced labour.

❖ No child below the age of 14 years shall be employed to work in a factory, mine or any other hazardous employment, (Art. 24)

❖ The tender age of children is not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength (Art. 39 e), and that Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that youth are protected against exploitation and against moral and material abandonment (Art. 39 f),

❖ The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years, (Art. 45)

❖ Whereas it is a Fundamental Duty of a parent or guardian to provide opportunities for education to his child or ward between the age of six and fourteen year, (Art. 51A)⁶

Although through the National Policy for Children 1974⁷, we are committed to providing for adequate services to children, both before and after birth and throughout the period of growth, to ensure their full physical, mental and social development. However, we affirm that the best interest of children must be protected through combined action of the State, civil society, communities and families in their obligations in fulfilling children's basic needs. Whereas we also affirm that while State, Society, Community and Family have obligations towards children, these must be viewed in the context of essential and attendant duties of children and inculcating in children a sound sense of values directed towards preserving and strengthening the Family, Society and the Nation. And whereas we

⁶ National Plan of Action for Children (2005), Government of India, Ministry of Human Resource Development, Department of Women and Child Development, New Delhi.

⁷ National Policy for Children (1974), Government of India, Department of Social Welfare, New Delhi.

believe that by respecting the child, society is respecting itself.

RIGHTS VIOLATIONS OF RAGPICKER CHILDREN IN CUTTACK CITY

In a democratic country, it is the responsibility of the State to protect and promote human rights. All State institutions have a duty to respect human rights, prevent human rights violations, and take active steps for the promotion of human rights whether they are the police department, the army, the judiciary or civil administration. Now a day's human rights issues and violations are increasing not only in India but also all over the world. Govt. Of India has declared and committed in international and national levels to protecting Human Rights violations but practically lakhs of child rag pickers in India everyday abuse by some body. The question is that when human rights declared rights for all whether he/she is adult or child so we cannot separate them their rights violations from human rights point of view. In this context some questions comes to my mind i.e. what about the government responsibility and what about the legal responsibility about ragpicking children? Can they watch everything's but cannot take any positive measures for protecting their human rights violations or they think that slums children are not effectively appropriate for country's development process?

In this part, the paper aims at to study the rights violations of ragpickers in Cuttack city through the link between the conventions on the rights of the child (CROC) which declared in 1989 by United Nation General Assembly to the 54 articles for children and primary data collected from Cuttack city of Odisha. Out of 54 articles, some of articles i related to my paper for study the rights violations of rag pickers. These are discussing below:

Article 2- *States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.*

This article pointed out that state protected to child rights from any types of discrimination on the basis of their status like poor, poverty and many more. But in my research report i found that in cuttack city of Odisha ragpicking 100% children engaged this work because of poverty and poor. Poverty and poor conditions one of the main form of discrimination, where children choose this



profession. In this context what is the role of the state, why state not take positive steps for protecting rag picking children from discrimination.

Article 7 – *The child shall be registered immediately after birth*

My research focus that ragpicking children not registered their name after birth. When I asked their parents why you not registered your children name, their replied me they do not know about where they registered their children name. Here one thing i found that they are not getting any facilities from state and society because of their name is not registered. They also not aware about their rights.

Article 8 – *The right of the child to preserve his or her identity*

During my data collection period I found that ragpicking children have identity crisis. That means they donot know about their exact parents because when i asked them about their parents they told me some person's name but the neighbours people said some others name i.e the one of the biggest problem with ragpicking children.

Article 13 – *The child shall have the right to freedom of expression*

Right to freedom of expression is one of the important rights of children. Those child got education they know about their freedom but those child like rag pickers they do not have proper identity and not get education so they do not know about what is freedom of expression. These children are voiceless because of lack of freedom of expression.

Article 16 – *No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family home or correspondence. The child has the right to the protection of the law against such interference or attacks.*

My research found that in all the 100 ragpickers families are staying in Cuttack, is not legally recognized. Any criminal incidents happen in their locality police often come to their Basti and torture to not only this children but also their family members. So in this regard they do not have privacy. As i already mentioned that they are not legally recognised by society and they do not have voice so they are not against of such types of interference and attacks.

Article 24- *States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.*

Ragpicker children of Cuttack city face very serious hazards in terms of their physical well-being. During their rag collection they are not used hand cover i.e. why some time they affected by serious

cut injuries. They also have to travel fair distances during the working day which leads to hazards with traffic. They carry very heavy loads on their backs, leading to back pain. The dust and the pollution must inevitably contribute to more acute health issues, such as lung problems. The dirt at work is also dangerous because there are not sufficient or clean water supplies either at work or at the slum, so bacterial infections are easily spread between workers. Furthermore, if the children are disabled or harmed through ragpicking, there is very little or no chance of gaining any form of compensation. The mental health of ragpicker children is also a serious issue.

Article 25 – *The right to benefit from social security*

There is no social security provision in India and this greatly contributes to the high incidence of child labour. Without ragpicking, the children may not be able to feed themselves and their families. This leads to difficult questions on how to reduce child labour without increasing poverty – for example, a complete ban on child ragpicking would have a very serious affect on the poor households, leaving them with a large income cut, as ragpicking is proportionally well paid. There are several different theories on ways to reduce child labour without deleting income from the poor. Fertility patterns may adjust if child labour were to be banned, once parents realize that child work is not an option, they may have fewer children. However, this is problematical in a country where contraception and sex education are still somewhat taboo subjects and people marry young. Other theories are that banishing children from the labour market will create a labour shortage, resulting in higher wage rates for adults; introducing an adult minimum wage may succeed in raising adult incomes thereby making child work unnecessary etc. These are all difficult to implement in the case of ragpicking as it is a self-employed profession. Therefore, investment in social security provision, particularly unemployment benefit, is of the utmost importance.

Article 28 – *The right of the child to education...in particular (a) make primary education compulsory and available free to all*

The interrelationship of lack of education and discrimination are at the crux of rights' violations against ragpicker children. The right to education informs and influences almost all other rights stated in the Convention. As the Childs Rights Information Network states, "the ability to claim and enjoy the rights of an informed and responsible citizen rests squarely on a child's access to a good basic education. A quality education - that encourages



children's participation and critical thinking and is infused with the values of peace and human dignity - has the power to transform societies in a single generation." India's National Policy on Education in 1986 gave the highest priority to the programme of universal elementary education and recommended that free and compulsory education of sufficient quality was to be provided to all children up to the age of 14 years before entering the 21st century.

Even when the ragpicker children get accepted into a government-run school, they face enormous problems, quite apart from the fact the schooling is often of very poor quality. Both teachers and other children discriminate them against because they are ragpickers. This reflects the general discrimination against them in society. Many are embarrassed by the fact that they are often older than their classmates. There is a high drop out rate, because families cannot afford for their children to remain in education and need the extra income. In short, education is the way out of a life of poverty, and the way out of such dangerous and degrading professions as ragpicking. It is very clear that educated people have higher earning potential and are thus able to improve the quality of their lives. Even basic education is empowering both politically and socially as it enables people to gain greater choice and control over their lives and to participate fully in the wider community in every sense. Poverty is both a cause and consequence of insufficient access to education, so in this sense the ragpickers are truly in a vicious circle. However, with proper state control of this fundamental right, it would be a lot easier for ragpicker children to escape the invidious circumstances they are presently in. Furthermore, keeping children in school is a well-recognised strategy for reducing child labour.

Article 31 – *The right of the child to rest and leisure, to engage in play and recreational activities*
One of the problems facing ragpicker children is the lack of recreational time. Their days are not structured and they have no set free time, unlike children at school. From my experience they are very keen on drawing and sports activities, but there is no real space to encourage creativity. They engage in sex because it is a pleasurable activity, but this is problematic because they are often young and ill-informed about the emotional and physical risks.

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

The government's refusal to provide or implement effective legislation against ragpicking is in direct violation of this Article.

Article 37 – (a) *No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment;* (b) *No child shall be deprived of his or her liberty unlawfully or arbitrarily*

Ragpicker children are constantly picked up by the police. They are arbitrarily arrested and taken into custody without any due process and without much evidence against them; indeed illegal arrests and detentions are by definition 'arbitrary.' Ragpicker children expressed surprise that there existed countries in which the police were heavily regulated and were a trusted institution. The ragpicker children have no faith in the police because they are detained without lawful reason. For example, two ragpicker children of only 8 years of age were arrested and taken into custody for two days because a shopkeeper suspected them of theft. They were beaten by the police officers, who also failed to inform their parents about their detention. There is absolutely no due process shown by the police. Basic procedural rights of persons who are arrested include the right to know the reasons for arrest, the right to be brought promptly before a judge or other judicial officer following arrest, and the right to expedient implementation of justice, be that in trial or in release. Victims of unlawful arrest also have an enforceable right to compensation. These provisions are not followed in relation to ragpicker children.

Article 40 – *The right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth*

The criminal justice system is descended from the British model and is embodied in two principal statutes – the Indian Penal Code (amended 1993) and the Code of Criminal Procedure (1973). Both are subordinate to the constitution which states the principal of equality before the law in Article 14. However, for all practical purposes, the implementation of these norms varies widely based on the class and social background of the accused. I have no information regarding any ragpicker children who have actually gone through the criminal justice process, however, it is worth noting that the JJA has clear legislation regarding the punishments available to children, which the police and courts should follow. These include the options of allowing the juvenile to go home after advice or admonition, participation in group counselling, performing community service, payment of fines,



release on probation (s15(1)); obtaining a social investigation report (s15(2)); no joint trials of juveniles with adults (s18) etc. These should be followed strictly. However, it is unclear how effective the JJA is. Certainly the previous Act in 1986 was not followed. In 1999 Human Rights Watch stated, "In India, we found that police regularly detained street children without charging them with any offence and failed to bring them before magistrates in the time period required under India's Juvenile Justice Act; beatings are a common feature of police treatment of children in detention."

II. CONCLUSION

The purpose of this report is to illustrate all the ways in which the rights of the ragpicker children are violated by the state and other sectors of Indian society. The contraventions are so numerous and pervasive, and the reasons that these abuses occur are complex and multi-causal, that it is almost impossible to see how they can be effectively stopped. The work of SPAN and other NGOs is vital in bringing attention to these violations. Organisations such as the Campaign Against Child Labour intervene at the national level by building awareness, litigation, advocacy, lobbying etc. Nonetheless, however much is done at these different strata, it is absolutely crucial that there is a sea-change in the way that society views the ragpickers. This in turn is dependent upon the political motivation to view child labour, specifically ragpicking, as deleterious to the health of the children and to the nation. Current policies and legislation concerning child labour are useless unless adequately enforced, but it is political determination which is fundamental to effect

change. At the moment, sadly, it does not appear that this incentive is present in the government. It is in the government's interest to maintain the status quo, partly because it saves money through the work of the ragpickers. However, educating the ragpicker children that there is a universal standard of human rights which the world has agreed upon, will ultimately empower them because they will understand that they are entitled to the same rights as other people.

In the above discussions, it is shown that human rights are needed every child for development of their personality and its available to all children of the world as human being, without any discrimination on any ground like caste, creed, place of birth, sex etc. Without human rights, no one can survive freely. Finally, I conclude with some suggestions that might help to ragpicking children for protections of their human rights from violations. These are: (I) Implement the legal provisions on the right manner without any support or fear, (II) Citizens should be vigilant, well informed and active, (III) Cooperation between Central government and State government while taking legal decisions, (IV) Both Central and State government should take awareness programmes for human rights, (V) the Court take quick and fair decisions on the matter of violation of human rights, (VI) government system should have accountability and transparency (VII) Efficiency and Effectiveness of administrative and political system, (VIII) Both NHRC and SHRC take preventive measures so as to stop further human rights violation of ragpicking children, (IX) Last but not the least, it is the duty of every individual to protect the human rights of others without any hesitation.

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