

Issues of Child Rights: A South Asian Perspective

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South Asia has the world's largest population with a large number of the world's children living in the region. It is also said that the highest number of undernourished children. Girl children are in a horrible situation in the region, they are forced to marriage at their very tender age. SAARC apex body SAIEVAC made a report on child marriage, reflecting realities and responses of child marriage. It also upholds reasons for the persistence of child marriage in the South Asia. Legislative response to child marriage shows different countries of South Asia have their own policy in this regard. Negative consequences include that it impedes girl's education, early pregnancy results in poor maternal and infant health outcomes. This paper also explores that international platforms like UN, UNICEF etc made their efforts for protecting child rights from gravest violation of human rights. World's largest democracy like India where each and every one are included irrespective of caste, class, religion for their fundamental rights. In such a country, children are sexually abused, psychologically tortured in their childhood. Though, provisions of fundamental rights and directive principles protect child rights including abolition of child labour and child trafficking, focuses on their free education at the age of 6 to 14 years also promotes various facilities for girl child to accelerate their education in higher education sectors. In the year 2012, POCSO act enacted for preventing sexual abuse of children in their childhood. This act is mentioned that sexual abuse of child is punishable offence in India. In the conclusion, it is argued that government initiates, legal measures, medical and health care assistance, socio-economic measures, NGO initiative may eradicate the violation of child rights in near future.

Key Words: *child; rights, POCSO act, trafficking, democracy. Sexual harassment; under-nutrition.*

Introduction

Child rights are becoming crucial issues around the world. In the West, some of the countries formulated various provisions for protecting child. But in the Asian countries particularly in South Asia, there is no strong law regarding child rights. As we know that, democracy includes irrespective of class, caste, creed sex etc or inclusion of every segments of the society. Despite

that fact children are the worst position around the world. Child trafficking, child marriage, child labour, sexual abuse etc are rampant in South Asia. Though a large number of world's population with their children living in the South Asian region. SAARC- a forum of South Asian regional cooperation which aims at coordinate relations among the member states with their varied issues and child rights are one of them. Recently SAARC initiative SAIEVAC made a report on child marriage which emphasized realities of this issue. There are two convention of SAARC such as

1. SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia.
2. SAARC Convention on preventing and combating the trafficking in women and children for Prostitution.

It is noteworthy that in the year 2002, SAARC observed the decade of rights of child. Reality shows that South Asian countries failed to protect child rights in the region. Apart from that Convention of the Children also emphasized on child rights. International platform like Uno, UNICEF also addressed the acute problem of child rights. Malnutrition, infant mortality etc are burning issue of child rights. Girl child is also victim because of her rights are not granted by the society at large. Girls of South Asian countries forced to marriage at their tender young age. It is occurred especially for Pakistani girl. Largest democracy like India, where child rights are not protected for everywhere. Child trafficking is the menace of the society especially in cross-border area of South Asian region. Dropout rate of education is high. At this outset, the objective of this paper is to explore the child rights in the South Asian perspective and how its policy formulation accelerate in democracy especially in India. Apart from that this paper tries to focus some suggestion, recommendations for protecting child rights mechanisms in near future.

Child Rights in South Asian Perspective: A Debate

The South Asian Association for Regional Cooperation (SAARC) is a regional organization comprising eight countries which tries to promote in various aspects. In 2002 during the SAARC decade of the rights of the child, the SAARC countries adopted the Convention on Promotion of Child Welfare in South Asia. The Convention denotes a child as any person who has not completed 18 years of age who is national of the region, unless under national

law majority is attained earlier. The purpose of the Convention is to solidify the commitments the South Asian Countries have made as the world summit and to other international bodies by recognizing mutual cooperation and assistance.

The convention also highlights that countries should recognize the rights of a child recognize the rights of a child as laid out in the UNCRC and uphold the rights of the family as primary caregivers, and the best interests of the child. To achieve their goals states regional priorities should be recognizing the need for essential service such as education and health and also provide proper legal and administrative safety nets such as national laws that protect the child from abuse, exploitation, harassment etc. So there is urgent need for juvenile –justice and encouragement of media which disseminate information child rights towards society at large.

SAARC adopted a convention on Preventing and combating the trafficking in women and children prostitution in 2002. The aim of the convention is to battle and prevent the trafficking of women and child, and rehabilitation of victims of trafficking and to combat ant prostitution networks especially where SAARC countries are the origin , transit or destination country. It is the responsibility of the states to create a law or penal code criminalization an act of trafficking and putting into place penalties for the violation of the law.

Apart from that united nations Convention ion the Rights of the Child is significant. This convention states that what rights are children must have. Human rights belong to all people, regardless of their age, including children. However, because of their special status where children need extra protection and guidance for adult children also have some special rights of their own.

It is said that SAARC conventions have stressed importance on welfare and combat trafficking of women and child where child rights are human rights according to UN convention. On the whole convention have tried to protect child rights and made awareness of their rights to the entire human society across the world.

However, SAARC initiative SAIEVAC that is the South Asia initiative to End Violence Against Children is a SAARC apex body which is an inter-governmental body with a vision

to children both boys and girls should enjoy violation and discrimination free society in their life. SAIEVAC stressed importance on child marriage, sexual harassment, child labour, corporal punishment etc.

- **Child marriage** is rampant in South Asia region where girls are married off under the age of 18. Child marriage usually performed because poverty and the lack of economic opportunities.
- **Sexual abuse** is the hidden and underreported form of violence against children and youth is sexual abuse. It happens in community and within family also. Child prostitution, pornography, sex tourism, trafficking are rampant in south Asia. The victims of exploitation and abuse are also at high risk of sexually transmitted disease (STD).
- **Child labour** is the menace of South Asian region. They are working longer hours with little or no pay. Child labour is the part of informal economy and based from mainly urban areas.
- **Corporal punishment** is now recognized as a human rights violation. Corporal punishment is widely practiced at home and in school, other institutions and penal system for young people, as well, as in situations of child labour. Corporal punishment in the form of hitting, slapping, kicking, beating etc.

In 2013, SAIEVAC report on child marriage focused that it is as human rights crisis and impediment of development in any society. Child marriage is particularly pervasive across South Asia and Africa, where 50-70 per cent of girls in some countries are married before the age of 18. The prevalence of child marriage varies substantially between and within countries in South Asia, Bangladesh has the highest prevalence of child marriage in the region (66 %) followed by Afghanistan (46%), and Nepal 41` %. These four countries are treated as the region's 'hot spot' due to their high child marriage prevalence.

Girls living in rural areas are married off early in Bangladesh and India. SAIEVAC report also identified that various reasons for persistent of child marriage such as 1) protection of girls' sexuality 2) gender discrimination , limited educational opportunity, 3) poverty

4) weak enforcement of child marriage laws etc. Apart from that there are no uniform law among the South Asian region regarding child marriage.

Apart from the initiative of national governments and international community, several South Asian countries made their own law for combating child marriage. Here we present a different aspect of child marriage laws among the some of the South Asian countries are as follows:

Afghanistan

The civil law in Afghanistan said that legal marriage for girls as 16 and for boys 18. Sharia Law that operates in the country goes by the age of puberty and therefore in practice, a girl is often married off when she is considered 'physically mature', which can occur at a much younger age. However, according to Sharia law, her father can allow her to marry.

Bangladesh

The child marriage Restraints Act of 1929 passed during British rule is still applied in Bangladesh. A national law passed in 2004 requires that all Births be registered in order to determine a girl's age when she marries.

India

India has taken progressive legal steps to prevent child marriages. India's Marriage Restraint act was enacted in 1929. A new law banning child marriage was passed in December, 2006 and also indicated marriage age of girls' at 18 years old.

Nepal

The Nepalese Child marriage law stipulates that both girls' and boy marry at age 18 both with parental consent, and at age 20 without consent. In addition, it recognizes daughters or rightful heirs high number child marriage are still continued.

Pakistan

Pakistan also stipulates marriage age for girls at 16 and for boys it is 18. Marriage registration is also very low despite the 1962 Muslim family law which mandates it.

Sri Lanka

In case of Sri Lanka non –Muslim majority girl was set at 18 years old for their marriage. The Muslim Marriage and Divorce Act of 1951 continues to regulate matrimonial law for the community and allows girls to marry as young as 12 years old or even younger with the permission a ‘quazi’, a Muslim court.

Maldives

The legal system in the Maldives is based on a mixture of Islamic law and English Common law. According to civil law the legal age of marriage is now 18 years for girls in the Maldives.

Bhutan

Marriage age of Bhutan is 18 years for both boys and girls. In 2007, women and child protection unit was established with Royal Police to work towards reducing child marriage.

All in all, there is no uniform civil law to prevent child marriage in South Asian region. Though the countries of South Asia have pluralistic of nature, mixture different religious communities, and colonial legacy led them accelerate different socio-cultural settings. In this context rights are challenged by existing socio-political order. An issue of child rights has become relevant for development of any nation.

Apart from that under nutrition is the problem of child of South Asia . 38 per cent of children under five are stunted due to persistent nutrition deprivation, 32 percent are under weight. Stunting is linked to an increased risk of non-communicative diseases in adult life. Women who are stunted in early childhood are more likely to give birth to underweight children, perpetuating the inter-generational cycle of under-nutrition.

So, we can say issues of child rights centering on various aspects child marriage, trafficking, under-nutrition, child labour which are hamper the progress of society and development of any nation.

In India, fundamental rights and directive principles guarantees child rights in the country.

Apart from right to equality to the Indian Constitution, Article 23 and 24 focus on trafficking

as punishable offence and no child below the age years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Article 21 A also guarantees free and compulsory education to all children of the age 6-14 years of the country. Article 39(e) and (f) provides that the state shall, in particular, direct its policy towards securing to “ensure that the health and strength of workers, men and women and the tender age of children are not abused” and that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength”. Article 45 states the childhood care and education for all children. Article 47 states that state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. (Basu 2010:158)

So we can say that fundamental rights and directive state policy of the constitution also emphasized some aspect of child rights and their education, wellbeing etc. it is said that democracy is all about inclusionary arrangement of all sections of the society thus child should be included to protect their rights by the state.

The Protection of Children from Sexual offences (POCSO) Act: Indian Perspective

India has one of the largest population of children in the world--- Census data from 2011 shows that India has a population of 472 million children below the age of 18, of which 225 million are girls. Protection of children by the state is guaranteed to Indian citizens by an expansive reading of Article 21 of the Indian constitution and also mandated given India's status as signatory to the UN Convention On the Rights of the Child. Child sexual abuse laws in India have been enacted as part of the nation's child protection policies. The Parliament of India passed the 'protection of children against Sexual offences Bill', 2011, regarding child abuse on 22nd May 2012 into an act. The rules formulated by the government in accordance with the law have also been notified on November 2012 and the law has become ready for implementation.

Goa Children Act 2003, was the only specific piece of child abuse law before **POCSO Act**. Under the following sections of Indian Penal Code:

I.P. C (1860) 375---rape

I.P.C (1860) 354—Outraging the modesty of a woman

IP. C (1860) 377 –Unnatural Offences

However, the IPC could not effectively protect the child due to various shortcomings like:

IPC 375 does not protect male victims or anyone from sexual acts of penetration other than ‘traditional’ peno-vaginal intercourse.

IPC 354 lacks a statutory definition of ‘modesty’. It denotes a weak penalty and is a compoundable offence.

IPC 377, the denotes ‘unnatural offences’ is not defined. It only applies to victims penetrated by their attacker’s sex act, and is not designated to criminalize sexual abuse of children.

The Protection of children from sexual offences (POCSO) Act, 2012, was enacted to provide a legal framework for the protection of children from offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process. The Act tries to put children first by making it easy to use by including mechanisms for child-friendly reporting, recording of evidence, investigation and speedy trial of offences through special courts.

The new Act explores variety of offences under which an accused can be punished. It recognizes forms of penetration other than penile-vaginal penetration and criminalizes acts of immodesty against children too. Offences under the acts include:

- **Penetrative Sexual Assault:** when a person touches the child, or makes the child touch them or some other person.
- **Sexual harassment:** passing sexual oriented remark, gesture, repeatedly following etc.
- **Child pornography**
- **Aggravated Sexual assault**

However, the act is gender –neutral for both children and for the accused with respect of pornography, the act criminalizes even watching or collecting of pornographic content involving children.

Child friendly process

The act provides for various procedural reforms , making the tiring process of trial in India considerably easier for children. The Act has been criticized as its person seem to criminalize consensual sexual intercourse between two people the age of 18 . The 2001 version of the bill did not punish consensual sex where both the partners were above 16 years of age.

Role of Child welfare Committee

A sexually abused child is considered as ' child in need of care and protection' under Juvenile Justice (Care and Protection of Children) Act, 2015. Police officer should therefore inform the child welfare committee about every case under the Act within 24 hours. Child Welfare Committee can appoint a support person for the child who will be responsible for psycho-social well being of the child. This support person will be linked with police , and keep the child and child's family conveyed message about progress in the care.

Conclusion

The analysis of the issues of child rights indicates that , what is more important today that is the need to discuss and contribute together about what improvement could be made for greater protection of these rights. Keeping in view the pluralistic societies of the South Asian region must address these problems with proper attention and priority. For the government,, it is said that serious need to re-evaluate South Asian experiences in the field of civil and political rights, economic social and cultural rights and gender rights. It is noteworthy that many of these rights are violated in the name of development, national interests and cultural aspects. The gap between the existence of rights and their effective enjoyment arises from a lack of commitment by governments to inform children and their parents about them. In this regard, some suggestions are mentioned,

1. Role of instruments Human Rights instruments

All the South Asian governments must work together actively to promote and ensure speedy ratification of key international covenants and conventions. In this connection a) International covenants on civil and political rights and its two optional protocols. b) International covenant of economic, social and cultural rights. c) Convention on the Rights

of Children (CRC) etc. It is noteworthy that the government should ensure speedy implementation of all the provisions of CRC to provide adequate protection to children.

2. Legal initiative

The South Asian governments should review national legislation and practices in order to eliminate discrimination on the bases of sex. It should also adopt necessary legislation for promoting and protecting child rights in all sphere. Family laws must be made more gender just. Governments further should eliminate gender bias in the . administration of justice and particularly discriminatory laws. It is said that there is urgent need for reorientation and gender sensitive programmers and training for the law enforcement, personnel, police government officials, and policy makers and all those dealing with respective policies and programmes for strengthening child rights.

3. Role of judiciary

If human rights especially of children have to be successfully implemented in developing South Asian countries, a free and independent judiciary is essential. Some of the law enforcement agencies, the policemen, lawyers and judges have rigid and conservative about child rights and its laws.

Apart from that Human Rights Commission(NHRC) established in India is a doing a great job. It entertains complaints regarding human rights violation at different parts of the country. Such commissions should be established in all the SAARC countries in local level like state and district level . It is very necessary to monitor human rights violation issues to a closer range.

- a) Socio-economic measures in any developing country poverty and illiteracy are greatest enemies of human rights especially in rural remotes area. /in the South Asian countries there is every justification for more and more protection for women and children and the marginalized people.
- b) Human rights literacy the primary need for the protection of women and children's human rights in South Asian is to provide basic human rights education. To make human

rights really fruitful to the South Asian society and to check violations of human rights of children should be well informed about their rights.

4. Health Care and Medical Assistance

It is to be said that cases of violence against children are often considered as legal issues. But the health issues should not be ignored. The victims of violence after need both immediate and long term medical assistance. In the South Asian context , there is a societies need to spend more resources on the mental health aspect of violence. There is often lack of support from family and friends of victims of violence.

Apart from that some solutions mechanisms should be made within the framework of regional organization like SAARC. It is expected that SAARC as the regional infrastructure for mutual problems we can hope for a better understanding of human rights in the member countries.

Setting up a parallel NGO mechanism at SAARC level should be considered as an immediate need in the region. SAARC should support the efforts at both government and non-government organizations in creating awareness of rights violation of children of this region.

5. Role of International community

Actions at the national and regional level should come forward to get rid of the problem. But South Asian countries will need substantial international cooperation to check human rights violations and ensure greater protection.

All in all , protection of child rights is very necessary for every nation. Child is future of any nation , protecting child rights is an inclusionary step for democracies around the world.

References