

A Human Rights Approach to First Call for Children: Mapping the Perils and Promises in South Asia

Geeta Pathak Sangroula*

Abstract

The Convention on the Rights of the Child (CRC) is regarded as one of the most successful human rights treaties for its substance and global acceptance. Being in a row among the highest number of State parties, all South Asian countries promised to respect, protect, and fulfill children's rights. However, the socio-legal constraints and deficits in practical implementation measures have caused setbacks in protecting child rights. This paper aims to explore the historical antecedents of international human rights standards developed step-by-step that contributed to adopting the Convention on the Rights of the Child (CRC). This article navigates the implementation of the provisions enshrined in the CRC, following the essence of the 'first call for children' as echoed by the Vienna Declaration and Programme of Action in 1993. The paper aims to reflect the international and regional legal standards incorporated in the domestic laws of South Asian countries. It further intends to focus on a comparative analysis of the legal mechanisms, socio-economic, and political situation regarding child rights with particular reference to the situation and condition of child rights in the South Asian region.

Keywords: - Child Rights, South Asia, International Human Rights Law.

I. Introduction

The definition of a child is subjective. However, the internationally recognized Convention on the Rights of the Child defines a child as anybody below the age of 18¹. In history, children did not have rights. For instance, the Hebrew and Greek cultures considered child rights as subjects of intervention rather than protection². They were considered a 'problematic population'³. They were abandoned, tortured, and killed⁴. In

* Geeta Pathak Sangroula is a Senior Advocate (Supreme Court of Nepal), Professor, Faculty of Law at Kathmandu School of Law. She can be reached at geeta.pathak@ksl.edu.np.

¹ *Convention on the Rights of the Child*, 2 September 1990, 1577 UNTS 3, 20 November 1989, art.1.

² Rama Kant Rai, "History of Child Rights and Child Labor", *Men Engage Alliance*, 2011, available at <http://menengage.org/wp-content/uploads/2014/06/History-of-child-rights-and-child-labor.pdf>, accessed on 20 November 2020.

³ *Ibid.*

⁴ Lloyd deMause, *The History of Childhood: The Untold Story of Child Abuse*, Rowman and Littlefield Publishers, 2006, p. 13.

fact, one famous write-up, *Centuries of Childhood*, mentions that there was no concept of a child in earlier ages⁵. However, the notion slowly shifted, after which scholars like Freeman started arguing that child rights should be taken seriously⁶.

Children are one of those vulnerable groups who cannot even demand their rights when they are infringed. Hence, this is a grave issue. Irrespective of the fact that they are not in the position to make any substantial decision, the regime of child rights stands on the foundation that children should be able to make the decisions that affect them for their best interest, and proper information must be provided to them on which they can base their decision⁷. Discussion of the child's rights is to be done in the fold paths: one-fold where a child is to be considered an autonomous individual and is to be respected accordingly and another fold where child rights are highly subjected to the principle of *Parens patriae* where the family, society, and state acts as the guardian to protect the rights of the child. The earliest document regarding child rights can be found in the Massachusetts Body of Liberties of 1641⁸. This document secured the liberty to choose mates, the prohibition against unnatural severity, etc. But if children above 16 did not obey their parents, death penalty was given to them. In comparison to other rights, child rights have a reasonably short history. The history of children's rights can be traced to the 19th century. Parents had the power of life or death of their children in some parts of the middle age.⁹

However, traces of the research done and actions taken by the British Parliament against child labor during the 1830s can be seen. Scarcely, the protection of children in the workplace was ensured in 1841, and the children's right to education was sporadically provided in 1881¹⁰ in France. In the early 20th century, industrialization was at its peak. This led to the promulgation of inventions. Many such industrialized countries used to take children as labor. There were no mechanisms to protect children at this time. It was acceptable and allowed for children to work alongside adults in unhygienic and insecure conditions. There was a growing demand for understanding and adopting children's needs due to their conditions, and it led to efforts to realize their rights for protection and well-being.¹¹

The International Labor Organization adopted the Child Labor Convention in 1919. For the first time, the Convention put forth the concern regarding child labor and its extremism. It was only after this that child rights issues were discussed in the world arena. Subsequently, 'Save the Children International Union' adopted its charter in

⁵ Philippe Ariès, *Centuries of Childhood*, New York: Vintage Books, 1962, p. 34.

⁶ Michael Freeman, 'The Future of Children's Rights', *Children & Society*, volume 14:4, 2006, pp. 277–293.

⁷ Deepak Kumar Behera, *Childhoods in South Asia*. Oriental Longman and Pearson Education, 2007, p.3.

⁸ Savita Bhakhry, *Children in India and Their Rights*, National Human Rights Commission, New Delhi, 2006, p.15.

⁹ 'History of The Rights of Child', *International Catholic Child Bureau (BICE)*, 2014, available at https://bice.org/app/uploads/2019/09/BICE_EN-2019.pdf, accessed on 20 November 2020.

¹⁰ "Historical Overview of the Children's Rights Evolution", *Humanium*, available at <https://www.humanium.org/en/childrens-rights-history/>, accessed on 20 November 2020.

¹¹ 'History of Child Rights', *UNICEF*, available at <https://www.unicef.org/child-rights-convention/history-child-rights>, accessed on 20 November 2020.

1923 A.D.¹² It focused on adequate care for the children. The Geneva Declaration on the Rights of Child was adopted by the League of Nations in 1924, which was based on the work of Janusz Korczak¹³. It is regarded as a significant milestone in attempts to raise awareness about the rights of children.¹⁴ After the declaration, the protection of child rights was considered not just as the responsibility of the family but the whole world. Children were treated as a general category under the human rights regime until 1946. The UN General Assembly established the International Children's Emergency Fund, UNICEF, in 1946 to protect all children's well-being. The United Nations later adopted the Declaration of the Rights of Child in 1959.¹⁵ The UN General Assembly declared 1979 as the International Year of the Child to mark the 20th anniversary of the Declaration of the Rights of Child and the United Nations Standard Rules for the Administration of Juvenile Justice were introduced in 1985.

Considering child rights as an integral part of Human Rights, the United Nations adopted the Convention on the Rights of Child (CRC) in 1989¹⁶. It was only after the development of the CRC that child rights were considered specific rights. Before that, children and their rights were included in the general category of human beings. This impaired any propitious steps to be taken in securing and protecting children's rights to the expected level. Although scattered efforts were carried out to consider the issues regarding child rights violations, child rights, precisely as such, needed to be given more importance. The idea of the "first call for children" echoed in the World Conference on Human Rights¹⁷ eventually established an inherent nexus between the child's rights and the universality of human rights, including States' obligation to protect the rights and interests of the child.

II. Convention on the Rights of the Child (CRC), 1989

Since 1989, CRC has been signed by 196 countries all around the world.¹⁸ Incorporating 54 articles altogether, the provisions of the CRC set how governments should work together to make children's rights accessible and available to children. It is a legally binding international convention setting out every child's civil, political, economic,

¹² "Save the Children: History" *SC Norway*, available at <http://www.scnorway.ru/eng/history/>, accessed on 20 November 2020.

¹³ *Humanium* (n 10).

¹⁴ Drafted by Eglantyne Jebb, the founder of the Save the Children Fund. The Declaration articulates that all people owe children the right to: means for their development; special help in times of need; priority for relief; economic freedom and protection from exploitation; and an upbringing that instils social consciousness and duty.

¹⁵ The soft law adopted for the first time recognizing among other rights, children's right to education, play and a supportive environment and health care.

¹⁶ Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 and came into force on 2 September 1990, in accordance with Article 49.

¹⁷ *Vienna Declaration and Programme of Action*, World Conference on Human Rights in Vienna, 25 June 1993, part II, para 45.

¹⁸ Office of United Nations High Commissioner for Human Rights (OHCHR), available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC, accessed on 20 November 2020.

social, and cultural rights. The convention provides that every child, regardless of race or religion, should have access to these rights.¹⁹ Its status as a legally binding instrument under international law concerning child rights is indisputable.²⁰

The two optional protocols were added to the UNCRC in 2000, and a third one was adopted in 2011. Among the two adopted in 2000, one obliges the governments to ensure that children under 18 are not forcibly recruited into their armed forces. The second protocol calls on the states to prohibit child prostitution, pornography, and the sale of children into slavery. The third optional protocol enables children whose rights have been violated to complain directly to the UNCRC.²¹

CRC is based on four core principles of devotion to the best interests of the child: non-discrimination, the right to life, survival, and development, and respect for the views of the child.²² Acknowledgment of the child's fundamental rights is a landmark concept put forth by the Convention. It also guarantees protection from abuse, violence, neglect, disregard for discrimination, exploitation, or punishment on any basis, such as physical, mental, moral, social, sexual, economic, freedom of expression, association, and peaceful assembly, freedom of thought, conscience, and religion, education to be provided for potential development, etc.²³ CRC guarantees the right to express views freely in all matters affecting the child.²⁴ Moreover, it allowed the child to be heard in any judicial and administrative proceedings that involve a child.

The convention has also recognized the right to privacy, family, home, or correspondence from unlawful or arbitrary interference. The right to access information and materials from various national and international sources to stimulate the child's social, spiritual, and moral well-being has been guaranteed. It encourages the mass media to have particular regard towards the linguistic needs of the child who belongs to a minority or indigenous groups.²⁵ CRC introduced the concept of providing exceptional protection to children.²⁶ Moreover, it introduced assistance to children temporarily or permanently deprived of their family environment. It states that the member countries shall ensure adoption, however matters related to the same are only to be authorized by the

¹⁹ Know Your Rights, *Save the Children*, available at <https://www.savethechildren.org.uk/content/dam/gb/reports/humanitarian/uncrc19-child-friendly.pdf>, accessed on 5 April 2020.

²⁰ Ursula Kilkelly, 'The CRC at 21: Assessing the Legal Impact', *Northern Ireland Quarterly*, volume 62: 2, 2011, pp.143-152.

²¹ *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, 12 February 2002, preamble.

²² Vicki L. Lamb & Kenneth C. Land, 'Worldwide View of Child Wellbeing' in Glatzer, W., Camfield, L., Moller, V., Rojas, M. (eds.), *Global Handbook of Quality of Life*, 2015, p. 452.

²³ IJ LeBlanc, 'The Convention on the Rights of the Child', *Leiden Journal of International Law*, volume 4:2, 1991, p.126.

²⁴ *Child Rights Convention, 1989*, art. 12.

²⁵ 'Promoting the Rights of Minority Children and Women: A Review of UNICEF's Policies And Practices', *UNICEF*, 2010, available at https://www.unicef.org/policyanalysis/rights/files/UNICEF_MRG_Report.pdf, accessed on 2 April 2020.

²⁶ Article 20 of the CRC mentions that exceptional protection and care includes the foster placement, *kafalah* of Islamic Law, adoption or if necessary, placement in suitable institutions for the care of children with due focus on the child's ethnic, religious, cultural and linguistic background.

competent authority with due implementation of the applicable laws and procedures. Provision of the facilities related to preventive and curative health care facilities for social security, including social insurance, are a significant undertaking of the CRC.

Regarding judicial proceedings, the Convention has ensured the right of every child to be treated equally, promoting a child's sense of dignity and worth, if and when, they are alleged as, accused of, or recognized as having infringed the penal law. The Convention seeks that the administration of justice shall consider the child's age and desirability of promoting a child's reintegration and assuming their 'constructive role in society',²⁷ ensuring fundamental freedoms and the respect of the children's rights. The Convention has ensured that the children are presumed innocent until proven guilty. Besides, CRC obligates states to establish a minimum age below which children should be presumed not to have the capacity to infringe the criminal law. These provisions have become the foundation for the Juvenile Justice system as well.²⁸

Article 4 of the CRC²⁹ sets out obligation for countries to implement the CRC. It obligates countries to take all necessary measures for the implementation of the convention, and although states have entered reservations, the reservations cannot be against the object and purpose of the convention.³⁰ The CRC is implemented by the Committee on Rights of Children (UNCRC) composed of independent experts. The reporting mechanism under CRC obligates the state parties to provide the steps and measures taken by them towards implementing the convention into domestic law and practice.³¹

III. Regional Human Rights Mechanism for Child Rights in South Asia

Before understanding the mechanism of child rights in South Asia, shedding light on the philosophy it laid its base on is essential. South Asian Philosophies have ties with the Indus Valley Civilization. Aryan culture and Vedas dominated the region³². Besides, the region is also influenced by Islam as the believers entered South Asia during the 8th century C.E.³³. As a matter of fact, 64% of the population follow Hinduism, 29% follow Islam, and the remaining follow other religions like Buddhism, Christianity,

²⁷ *Child Rights Convention 1989*, art. 40.

²⁸ Manfred Nowak, 'United Nations Global Study on Children Deprived of Liberty', *Global Campus of Human Rights*, 11 July 2019, available at <https://gchumanrights.org/research/projects/un-global-study/about.html>, accessed on 20 November 2020.

²⁹ 'States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.'

³⁰ Article 51 (2) of Child Rights Convention, 1989 states that a reservation incompatible with the object and purpose of the present Convention shall not be permitted. This provision is corollary to VCLT.

³¹ *Treaty Specific Reporting Guidelines*, CRC/C/58/Rev. 2/, 25 November 2010, para. 19.

³² Anne Murphy, 'The Indus Valley and Vedic Culture', *Asia Society*, 2020 available at <https://asiasociety.org/education/religions-south-asia> accessed on 20 November 2020.

³³ 'Religions of South Asia', *Center For South Asia Outreach* available at <https://southasiaoutreach.wisc.edu/religions/> accessed on 20 November 2020.

Sikhism, Judaism, etc.³⁴. Hinduism has a special position for child, and the philosophy elaborately explains various rights of the child, such as the right of guardianship, inheritance, etc. Manu Smriti considers the child to be a reincarnation of the self³⁵. However, children were not considered a possessor of individual rights³⁶. As per depictions in Mahabharata and Ramayana, the child-centeredness was limited to male children³⁷. But childhood was always regarded as a golden age in Eastern philosophy, unlike in the Western³⁸. Similarly, other religions of the region have placed the rights of children in an important position. For example, in India, the Muslim law protects rights like the right to be fed, clothed, taken care of until adulthood, enjoy love and affection, and be treated equally³⁹. In fact, in Islam, pre-birth and post-birth rights have also been categorized. Pre-birth rights include the right to be protected from Satan and the right to life, and post-birth rights are the right to naming, breastfeeding, custody, spending⁴⁰, etc. Religion and philosophies have moral obligations rather than legal until codified as law. Regional attempts led by Europe were being made in every corner to combat the situation of children. Because of the effectiveness of the regional mechanism, the South Asian region also made efforts for the collective protection of the rights and accountability of children. Regional Intergovernmental structures are established among member states that are bound by shared history, culture, unique interconnected boundaries, continents, or geopolitics such as economic or political, among other characteristics.⁴¹ Although the international bodies dealing with human rights issues set the international human rights standards, these regional structures seem effective in terms of effective, efficient, and appropriate execution of the set standards. The regional mechanism aids in resolving issues within their area in an original way as per the contextual situations with international instruments and standards as their referral points. Intergovernmental human rights mechanisms are valuable in addressing cross-border issues such as the trafficking of human beings and exploitation of migrant labor, but they also investigate national issues that require external pressure to push governments into action or provide redresses for violations resulting from the government's action or omission.⁴² Before SAARC, there were few other voluntary organizations like The *Children's Aid Society* and *Balken Ji Bari* during the

³⁴ 'South Asia', *COTF* available at <http://www.cotf.edu/earthinfo/sasia/SApeo.html>, accessed on 20 November 2020.

³⁵ Jayaram V, 'Children in Hinduism', *Hindu Website*, available at https://www.hinduwebsite.com/hinduism/h_children.asp, accessed on 20 November 2020.

³⁶ *Bhakhry* (n 8).

³⁷ *Ibid*, p.12.

³⁸ *Ibid*, p.14.

³⁹ Noor Ghazals, 'Child Rights: Socio-Economic and Cultural Dimensions', *Legal Service India*, available at <http://www.legalserviceindia.com/legal/article-1770-child-rights-socio-economic-and-cultural-dimensions.html>, accessed on 20 November 2020.

⁴⁰ 'Children in Islam: Rights and Duties', *Islam Story*, 11 September 2019 available at <https://islamstory.com/en/artical/3408703/Children-in-Islam-Rights-and-Duties> accessed on 20 November 2020.

⁴¹ Prakash Mani Tripathi, 'Relevance of Regional Organizations', *The Indian Journal of Political Science*, 2010, vol. 71:4, pp. 1243-1250.

⁴² Jefferson R. Plantilla, 'Regional Human Rights Mechanisms', *Newsletter of the Asia-Pacific-Human Rights*, volume 49, Information Center, 2007, p. 1.

1920s that were focused on providing service to children⁴³.

The South Asian Association for Regional Cooperation (SAARC) was established by the signing of the SAARC Charter in 1985. SAARC comprises eight member states: Afghanistan⁴⁴, Bangladesh, Bhutan, Sri Lanka, India, Nepal, Maldives, and Pakistan. SAARC was founded with the objectives of promoting welfare and improving the quality of life of people of South Asia with holistic development.⁴⁵

Informal consultations between SAARC countries and UNICEF proposed an appeal to the 2nd SAARC Summit for making enhanced political priorities for children in national development planning. It proposed a South Asian Conference in 1986 under the auspices of SAARC to discuss and present practical proposals for achieving national and regional cooperation for the protection and promotion of the rights of children. The proposal was accepted, and in October 1986, the conference took place, proposing an urgent response from the countries to the situation.⁴⁶ The conference addressed and proposed solutions for issues such as public policies for child development, physical environment, social environment, access to food, nutrition, and child growth, child survival and maternal health, and learning opportunities. SAARC countries, since the conference, have ratified the CRC and have established mechanisms in respective countries to ensure children's rights and improve their well-being. South Asian society is more duty-based and communitarian. Hence, the concept of individual rights as such was alien⁴⁷. This was a very crucial step because South Asia hosts a quarter of the world's child population⁴⁸.

SAARC has, over the years, recognized child rights as an essential area of cooperation among the member countries. Child rights have been the main agenda for various summits and ministerial conferences. The period from 1991 to 2000 was designated as the 'Decade of the Girl,' followed by the 'Decade of the Rights of the Child' from 2001 to 2010. These designations were made by SAARC with the aim of safeguarding and advancing children's rights within the region. SAARC countries further agreed upon two legally binding conventions relating to children and their well-being: the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia⁴⁹ and the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. The commitment of South Asian countries towards the

⁴³ Bhakbry (n 8).

⁴⁴ Afghanistan joined SAARC as its eighth member state in April 2007.

⁴⁵ *South Asian Association for Regional Cooperation (SAARC) Charter*, 1985.

⁴⁶ For example, during that time, of some 34 million children born each year in the region, around four million did not survive their first birthday. Another two million died before they reached five years, and not all those who survived grew up into healthy, productive adults. Beneath this trend was a complex of allied factors related to poverty, such as malnutrition, ill-health, and illiteracy, particularly of mothers, common childhood diseases and various forms of child exploitation; First Conference Report, *UNICEF*, available at https://www.unicef.org/about/history/files/Children_First_conference_report_1986.pdf accessed on 20 November 2020.

⁴⁷ *Bebera* (n 7).

⁴⁸ *Ibid*.

⁴⁹ Signed on the 5th January 2002 in Kathmandu, Nepal by the SAARC Countries.

realization of children's rights has resulted in the South Asia Call for Action on Ending Violence against Children in the Colombo Declaration, 2012, and the Kathmandu Call for Action to End Child Marriage in South Asia, 2014.⁵⁰

SAARC Convention on Regional Agreements for the Promotion of Child Welfare calls for all the member nations to unite in the determination to redeem the promises made to the South Asian Child at the World Summit for Children and various other national and international conferences and successive SAARC summits.⁵¹ The Convention aims to work with the following commitments:

- The development and protection of children in South Asia with an understanding of the rights, duties, and responsibilities⁵²
- Setting up appropriate regional arrangements to assist the Member States in facilitating, fulfilling, and protecting the child's rights, taking into account the child's changing needs.
- Calls upon the state parties to pursue a policy of development and a National Programme of Action that facilitates the development of Child, which would focus on accelerating the progressive universalization of the child's access to essential services and conditions.⁵³
- Appeals the state parties to ensure appropriate legal and administrative mechanisms and social safety nets and defenses by formulating the national laws to protect the children from abuse, discrimination, neglect, exploitation, torture or degrading treatment, trafficking, and violence.
- Appeals to the state parties to ensure the implementation of the Ninth SAARC Summit decision furthermore, to eliminate child labor from the SAARC region.⁵⁴
- Administer Juvenile Justice, promoting the child's sense of dignity, focusing on the child's reintegration into society.
- For all of the things mentioned above to be put into practice, the convention requests for the member states to encourage, support, and conduct bilateral and multilateral agreements and cooperation which would have a positive impact on regional and national efforts in facilitating, fulfilling and protecting the rights and well-being of the child.⁵⁵

The situation in the South Asian countries has improved manifold in various areas such as health, education, and protection of children among others, but the region is still

⁵⁰ Signed on the 5th January 2002 in Kathmandu, Nepal by the SAARC Countries.

⁵¹ *SAARC Convention on Regional Agreements for the Promotion of Child Welfare*, 2002, art. 2(1).

⁵² 'The South Asian Report on the Child Friendliness of Governments' *Child Rights Resource Center*, 2013, available at https://resourcecentre.savethechildren.net/node/7772/pdf/the_south_asia_report_lowres.pdf, accessed on 2 April 2020.

⁵³ *SAARC Convention on Regional Agreements for the Promotion of Child Welfare*, 2002, art. 4(2).

⁵⁴ *Ibid*, art. 4(3)(b).

⁵⁵ *Ibid*, art. 6.

home to the gravest violations of children's rights and the same can be inferred from the country reports in the Universal Periodic Review. It is not that there is no interest from the countries towards the realization of the rights of children. However, the problem as also noted in the South Asian Report on the Child-friendliness of Governments is that the countries have been putting in place frameworks, laws, policies, and institutions in place to ensure the implementation of the CRC but what is lacking is the effective implementation of the enabling structural frameworks.

IV. Legislative and Policy Frameworks in South Asia

South Asia is home to around 620 million children,⁵⁶ where more than 2 million children suffer from preventable deaths before they are 5 years old⁵⁷. Dehumanizing practices were rampant in South Asia, like sex-selective abortion, female infanticide, acid attack, *bachha baazi* (Afghanistan), *Kamalari/ Deuki/Jhuma* (Nepal), genital mutilation⁵⁸, etc., which had an immense negative impact on the overall mental, physical, emotional and social growth of the child.

However, South Asian countries have made significant progress in implementing the CRC over the last 30 years. Legal and policy frameworks have been established at all levels, including the political and social commitment towards the well-being of children. The positive indication is throughout the region in all jurisdictions, but a lot remains to be done.⁵⁹ The Committee on the Rights of Children has drawn attention to the social and legal risks and emerging concerns such as climate change. These risks faced by the children in the eight countries that make up South Asia hinder the realization of commitments made by these countries under the CRC and other international and regional frameworks. The following part deals with Legislative and Policy Frameworks in respective countries of South Asia:

A. Afghanistan

Children constitute a vulnerable and risk-prone category, and the situation is apprehensible in Afghanistan. Although in the aftermath of protracted conflict the past half a decade had witnessed certain improvements in the lives of children, including the formulation of specific laws like the Law on Juvenile Delinquency⁶⁰, the development of the National Strategy for the Protection of

⁵⁶ 'Gender Counts: A quantitative assessment of gender inequality and its impact on girls and boys in South Asia', *UNICEF Bangkok*, 2019, available at https://asiapacific.unfpa.org/sites/default/files/pubpdf/Gender%20Counts_South%20Asia.pdf accessed on 10 April 2020.

⁵⁷ 'UNICEF: Progress for children rights in South Asia, but inequalities exist', *UN News*, 11 September 2014, available at <https://news.un.org/en/story/2014/09/477192-unicef-progress-children-rights-south-asia-inequalities-exist>, accessed on 20 November 2020.

⁵⁸ 'The legal framework for child protection in South Asia', *UNICEF*, 2020, p.5, available at <https://www.unicef.org/rosa/media/5916/file> accessed on 21 November 2020.

⁵⁹ *Convention on the Rights of the Child*, 2 September 1990, 1577 UNTS 3, 20 November 1989.

⁶⁰ 'Juvenile Code of Afghanistan', *International Labor Organization*, available at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/70278/97836/F566579256/AFG70278%20English.pdf> accessed on 20 November 2020.

Risk-prone Children⁶¹, the building of schools, etc.,⁶² However, this changed on 15 August 2021, the Taliban took control of Kabul, after rapidly gaining control over many provincial capitals⁶³. The de facto authorities have suspended the Constitution and dissolved independent oversight mechanisms and institutions, including the Afghanistan Independent Human Rights Commission, both houses of parliament, the Electoral Commission and the ministries of women's affairs, parliamentary affairs and peace.⁶⁴

The Taliban's de-facto government has additionally promulgated decree-laws and instructions governing the rights of girls and women.⁶⁵ These "guidelines" have significantly impacted the education of children, as evidenced by UNICEF reports stating that 3.7 million children are presently deprived of education, with 60% of them being girls.⁶⁶ Furthermore, there are enduring prohibitions on girls' access to universities, and previous pledges to enable their attendance in secondary and high schools remain unfulfilled.⁶⁷

These actions starkly contravene the established constitutional and international legal frameworks preceding the de-facto government. Afghanistan's Constitution explicitly ensured the right to education for both boys and girls.⁶⁸ Moreover, the Education Law of 2008 had entrenched the provision of free compulsory education up to grade nine and cost-free education up to the completion of a bachelor's degree.⁶⁹ Additionally, Afghanistan, by ratifying the Convention on the Rights of the Child (CRC), acknowledged the right to education as enshrined in Articles 28 and 29 of the CRC.

There has been a noticeable surge in child labor, child marriages, and forced displacement.⁷⁰ Alarming statistics reveal that 88% of children have experienced a reduction in their food intake over the past year.⁷¹ Furthermore, one in ten

⁶¹ 'Afghanistan Launches National Strategy for Children at Risk', *UNICEF*, 2006 available at https://www.unicef.org/media/media_33948.html accessed on 21 November 2020.

⁶² 'The General Situation of Children in Afghanistan', *Afghanistan Independent Human Rights Commission (AIHRc)*, 2007, available at <https://www.refworld.org/pdfid/483bedd22.pdf> accessed on 22 November 2020.

⁶³ Report of the Special Rapporteur on the situation of human rights in Afghanistan, Human Rights Council Fifty-first session, 2022, UN.Doc.A/HRC/51/6, para. 12.

⁶⁴ *Ibid*, para 17.

⁶⁵ Heather Barr, 'List of Taliban Policies Violating Women's Rights in Afghanistan', *Human Rights Watch*, 2021.

⁶⁶ 'Education', *UNICEF Afghanistan Education*, accessed 8 October 2023, <https://www.unicef.org/afghanistan/education>.

⁶⁷ Farid, Naheed & Alwis, Rangita de Silva de, 'Afghanistan Under the Taliban: A State Of "Gender Apartheid"?' *Princeton SPIA Afghanistan Policy Lab*, 2023, accessed at: https://spia.princeton.edu/sites/default/files/2023-02/SPIA_NaheedRangita_PolicyBrief_07.pdf

⁶⁸ See, Article 43 recognizes the right to education, Article 44 specifically focuses on the rights of education to women, nomads, and elimination of illiteracy.

⁶⁹ *Education Law*, 2008, Afghanistan.

⁷⁰ 'Breaking Point: Children's Lives One Year Under Taliban Rule', *Save the Children*, 2022, p.11, available at <https://www.savethechildren.org/content/dam/usa/reports/breaking-point-afghanistan-childrens-lives-one-year-under-taliban-rule.pdf>, accessed on 8 October 2023.

⁷¹ *Ibid*, p. 19.

children frequently goes to bed hungry, and a significant majority of them are girls (62%).⁷² The impact on the physical and mental well-being of children is severe, with over one in four girls exhibiting daily signs of depression and anxiety according to caregivers (26% and 27% respectively), as outlined in a report by Save the Children.⁷³

These distressing conditions have come about due to the presence of the Taliban government, which has significantly impeded humanitarian aid and relief efforts. The imposition of both global and national sanctions on the Taliban government has further complicated the situation, exacerbating the plight of children.

The international community, in the United Nations General Assembly, has issued a strong plea for Afghanistan to uphold and wholeheartedly adhere to all treaties, covenants, or conventions—whether bilateral or multilateral—that the nation is a party to.⁷⁴ This includes a resounding expression of deep concern regarding the ongoing abuse of human rights, particularly those concerning women and girls.⁷⁵ Additionally, there has been a strong emphasis on the imperative to ensure the utmost respect for the human rights and fundamental freedoms of children within Afghanistan.⁷⁶

However, despite these international efforts, children, especially girls, remain an increasingly vulnerable group in Afghanistan.

B. Bangladesh

About 30% of the people in Bangladesh live in extreme poverty⁷⁷ which automatically makes people engage in various laborious work irrespective of their age, which is directly concerned with curtailing child rights and the social structure is keeping children from being exposed to opportunities to express themselves. About 13% of the children are in child labor (age 14-18), sometimes involving them in crimes like carrying arms, drugs, and other illegal activities⁷⁸.

In 1990, Bangladesh officially ratified the Convention on the Rights of the Child (CRC). However, even before this formal ratification, the rights of children were already safeguarded through various legislative measures.⁷⁹ The Children Act 1974⁸⁰ and The Children Rules 1976⁸¹ safeguarded the child's best interest

⁷² Ibid.

⁷³ Ibid.

⁷⁴ The situation in Afghanistan, 4 November 2022, UNGA A/RES/77/10, para. 6.

⁷⁵ Ibid, para. 9.

⁷⁶ Ibid, para. 11.

⁷⁷ Hardhan Kumar Mohajan, 'Child Rights in Bangladesh', *Journal of Social Welfare and Human Rights*, volume 2:1, 2014, p. 208.

⁷⁸ Ibid.

⁷⁹ Article 28 (4) stated that 'nothing shall prevent the state from making special provisions for women and children...'

⁸⁰ *The Children's Act*, 1974, Government of People's Republic of Bangladesh.

⁸¹ *Children Rules*, 1976, Government of People's Republic of Bangladesh.

along with providing separate juvenile courts forbidding joint trials of adult and child offenders.⁸² However, it is to be considered that only three child courts⁸³ were established, which couldn't convey as much work as expected. However, the New Act has incorporated the concept of establishing nationwide juvenile courts. Article 15 of the Constitution of Bangladesh obligates it to provide basic necessities for its citizens, including children. The National Children Policy, 2011,⁸⁴ and the Children's Act, 2013 are the primary laws relating to child rights.⁸⁵ The government has also constituted the National Council for Women and Children Development⁸⁶ to secure the rights provided by the legislation effectively. Similarly, its collaborative work with Bangladesh Shishu Academy,⁸⁷ especially, pre-primary programs, is praiseworthy. Thematic programs like the National Adaptation Programme,⁸⁸ which focused on climate adaptation, have also addressed child issues. Bangladesh has shown its keen interest in child participation through various programs like Child Parliament⁸⁹, National Children's Task Force⁹⁰, Ichchey Media Group (IMG)⁹¹, etc. The five-year-long program, Enabling Environment for Child Rights (2012-2017) focused on creating a conducive environment for the development of children.

Over the years, Bangladesh has impressed with its policies and legislative frameworks working towards the protection of children. Bangladesh achieved stable economic growth and has been praised by the United Nations and the International Civil Society Community for its efforts in achieving the Millennium Development Goals (MDGs).

Despite reasonable efforts, effective implementation of the laws and policies in Bangladesh remains a challenge.⁹² Child Welfare Boards set up as per the Children Act, 2013 at national, district, and sub-district levels are yet to function

⁸² 'A review of laws and policies to prevent and remedy violence against children in police and pre-trial detention in Bangladesh', *Blast*, available at https://cdn.penalreform.org/wp-content/uploads/2013/06/BANGLADESH-A-review-of-law-and-policy-to-prevent-and-address-violence-against-children_English_summary-report.pdf accessed on 22 November 2020.

⁸³ Nahid Ferdousi, 'The Establishment of Children's Courts in Bangladesh: From Principle to Practice', *Oxford University Commonwealth Law Journal*, volume 15:2, 2015, p.200.

⁸⁴ Sets out goals for the government for achieving while enacting and implementing child rights legislation.

⁸⁵ 'Route to Rights: Children are Speaking Up', *Child Right Now & Join Forces, Bangladesh*, 2019, p.7.

⁸⁶ 'Stakeholders Report: Situation of Child Rights in Bangladesh', *Child Rights Governance Assembly (CRGA), Bangladesh Stakeholders*, 2013, p. 3.

⁸⁷ *Ibid*, p.4.

⁸⁸ 'Bangladesh: National Adaptation Programme of Action - NAPA', *Prevention Web*, 2005 available at <https://www.preventionweb.net/english/professional/policies/v.php?id=8133> accessed on 22 November 2020.

⁸⁹ 'Child Parliament', *Resource Centre*, available at <https://resourcecentre.savethechildren.net/library/child-parliament> accessed on November 23, 2020.

⁹⁰ 'NCTF Bangladesh', *National Children Task Force*, available at <https://www.nctfbd.org> accessed on 23 November 2020.

⁹¹ 'Ichchey Media Group', *Find Glocal*, available at <http://www.findglocal.com/BD/Dhaka/185495148148906/Ichchey-Media-Group>, accessed on 23 November 2020.

⁹² Amanda Adamcheck et al., 'The Implementation of the Convention on the Rights of Children in Seven South Asian Countries', *Sage Journals*, volume 7:1, 2020, pp. 37-46.

correctly. The National Human Rights Commission of Bangladesh (NHRC), which monitors the overall situation regarding child rights in the country, is functioning on an extremely low budget. There is a severe lack of coordination and communication between various departments of the government, leading to ineffective dissemination of policy information. Children's Ombudsperson, proposed in the first constitution, is yet to be established. Bangladesh lacks proper implementation of international juvenile justice standards, and the situation of children in conflict is critical, with over 21,503 cases pending in juvenile courts. There are even inconsistencies in the domestic laws with the CRC.⁹³

C. Bhutan

Bhutan ratified the CRC in 1990, and its constitution provides several rights to children that apply regardless of age, with specific provisions protecting and promoting children from all forms of discrimination and exploitation.⁹⁴ The Child Care and Protection Act, 2011, Child Adoption Act, 2012, National Plan of Action on Child Protection, 2012; and the Domestic Violence Prevention Act, 2013, are some of the significant legislations governing child rights in Bhutan. Bhutan also established a National Commission for Women and Children (NCWC) in 2004 for the promotion and protection of child rights in the country. With the aim of rendering quality education to every child, a draft of the National education policy has been prepared⁹⁵. The government has also initiated Early Childhood Care and Development centers⁹⁶ which aim to foster the early development of children. Emphasizing the importance of nutrition government is also supporting the School Agriculture Program⁹⁷. A National Nutrition Task Force (NNTF) chaired by the Ministry of Health has been focused on nutrition and health of the child⁹⁸. Also, child care and protection units have been established under

⁹³ *Route to Rights* (n 82).

⁹⁴ See, Article 2(3), the Article also allows for children in utero to be heirs to the throne where no heir has yet been born, Article 8(5) states that a person shall not tolerate or participate in acts of injury, torture or killing of another person, terrorism, abuse of women, children or any other persons and shall take necessary steps to prevent such acts, Article 9(16) requires the State to provide free education to all children of school age up to "tenth standard", ensure that technical and professional education is generally available and that higher education is equally accessible to all on the basis of merit, Article 9(18) requires the state to take appropriate measure to ensure children are protected against all forms of discrimination and exploitation including trafficking, prostitution, abuse, violence, degrading treatment and economic exploitation and Article 23(6) requires a candidate for an elective office to declare any dependent children.

⁹⁵ 'National Education Policy', *Ministry of Education- Royal Government of Bhutan*, available at <https://www.gnhc.gov.bt/en/wp-content/uploads/2018/06/National-Education-Policy-v13.pdf>, accessed on 23 November 2020.

⁹⁶ Mitra Raj Dhital, 'Early childhood care & development in Bhutan', *UNICEF*, 2016 available at <https://blogs.unicef.org/east-asia-pacific/early-childhood-care-development-bhutan/> accessed on 23 November 2020.

⁹⁷ 'Bhutan: Children's Rights References in the Universal Periodic Review', *Archive Child Rights International Network*, 2014 available at <https://archive.crin.org/en/library/publications/bhutan-childrens-rights-references-universal-periodic-review-0.html> accessed on 23 November 2020.

⁹⁸ 'Investing in the Early Years, For Every Child in Bhutan: Annual Report', *UNICEF*, 2016, p.11, available at https://www.unicef.org/infobycountry/files/UNICEFAnnualReport_FINAL.pdf accessed on 23 November 2020.

the central Monastic body to address the rights of Monks and Nuns⁹⁹. One of the major achievements of Bhutan for implementing child rights has been the formation of the Family and Child Bench in the Thimphu District Court¹⁰⁰. To ensure the effective participation of the children in the state mechanism, Bhutan has also initiated Bhutan's Children's Parliament¹⁰¹.

Bhutan has had a sustained focus on the development and social upliftment of its population. Of the total budget of Bhutan, 45% is dedicated towards social welfare, but there are still various issues in the implementation of its obligations under the CRC. Bhutan has been going through significant legal reforms, and it faces financial and geographical constraints. Its child rights issues revolve around the areas of equity, justice, and legislative conformity. The Child Care and Protection Act focuses only on children in difficult situations and not on all children in the country. Further, a large part of the social welfare budget goes towards education and health services, but children's protection receives a very small proportion. There is a need for conformity among laws in Bhutan as the marriageable age in CRC is 18 years, but the marriage act in Bhutan sets it to 16 years. Although other acts conform to the CRC, such disparity in laws results in ineffective implementation. The tasks of the NCWC are monitoring and implementing children's and women's rights. Due to this broad portfolio, it confronts financial and personnel constraints.¹⁰²

D. India

India ratified the CRC in 1992, and its constitution provides various fundamental rights¹⁰³ relating to the protection and promotion of children's rights along with directive principles of state policy.¹⁰⁴ It follows the principle of protective

⁹⁹ *Bhutan UPR* (n 94).

¹⁰⁰ 'Committee on the Rights of the Child Considers Reports of Bhutan', *United Nations Human Rights Office of High Commissioner*, 2017 available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21634&LangID=E> accessed on 23 November 2020.

¹⁰¹ 'Bhutan Children's Parliament', available at <http://bcp.ecb.bt>, accessed on 23 November 2020.

¹⁰² In 2015, a National Law Review Committee was established in Bhutan with the mandate to harmonize the laws of Bhutan with international treaties. In 2016, the Women, Children and Youth Committee of the National Assembly had undertaken an initiative to receive views on the changes required in the penal code and other laws, which would be integrated in the ongoing law reform but till date the necessary changes are awaited.

¹⁰³ See, Article 14 '... shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.', Article 15 '... shall not discriminate against any citizen... (3) Nothing in this article shall prevent the State from making special provision for women and children. (4) Nothing ... shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.', Article 17 "Untouchability" is abolished and its practice in any form is forbidden...', Article 19 '(1) All citizens shall have the right – (a) to freedom of speech and expression; ... (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India.', Article 21, 'No person shall be deprived of his life or personal liberty except according to procedure established by law.', Article 21 A '...shall provide free and compulsory education to all children of the age of six to fourteen years...', Article 23 'Trafficking in human beings and begar and other similar forms of forced labor are prohibited...', 'Article 24 'No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.'

¹⁰⁴ See, Article 39 '... (e)... the tender age of children are not abused... and not forced by economic necessity to enter avocations unsuited to their age or strength; (f) that children are given opportunities and

discrimination and considers the special position of children¹⁰⁵. India has also signed the ILO Convention No. 5 of 1919¹⁰⁶. The first five-year plan (1951-1956) did address the issue of health, nutrition, etc. of a child. In order to give it momentum and for the implementation of the plan, the Central Social Welfare Board was established in 1953¹⁰⁷. The program was forwarded by the establishment of *Balwadis* throughout the country. Dr. Kothari's commissions led to the formulation of the National Education Policy in 1968,¹⁰⁸ which brought formulations in the education sector of India. First National Policy for children was made in 1974, which covered the issues of overall i.e., physical, mental, and social development. The idea of shared responsibility for protecting children and implementing their rights was introduced in the Children's Act 1960¹⁰⁹. This National policy considered the state as a nurturer of the children. The Government of India also signed the Alma Ata Declaration of 1978, which introduced an extensive immunization program in India¹¹⁰. A new policy was finalized in 2013, and a Plan of Action in 2016, guiding its plans and policies relating to children. India's domestic protection framework since 1992, includes the enactment of the Prohibition of Child Marriage Act, 2006, the Right of Children to Free and Compulsory Education Act, 2009, Commissions for Protection of Child Rights Act, 2005, under which 'The National Commission for Protection of Child Rights' was established in 2007, Protection of Children from Sexual Offences Act, 2012 (amended in 2019), Juvenile Justice (Care and Protection of Children) Act, 2000 (amended in 2015) and Child and Adolescent (Prohibition and Regulation) Labor Act, 1986 (amended in 2016). India has also had a dedicated Ministry of Women and Child Development in the Central Government since 2006. The National Commission of Child Rights acts as an ombudsman for the protection of child rights. Sectoral focus on the children of rural areas began after the inauguration of the Development of Women and Children in Rural Areas (DWCRA) under the Integrated Rural Development Program¹¹¹. Hereinafter, various funds and

facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood... protected against exploitation and against moral and material abandonment', Article 45 '...provide early childhood care and education for all children until they complete the age of six years', Article 46 '...shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes,...', Article 47 '...raising of the level of nutrition and the standard of living of its people and the improvement of public health...', Article 51 'The State shall endeavour to - ... (c) foster respect for international law and treaty obligations ...', Article 51A '... (k) ... parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.'

¹⁰⁵ Chandan Roy, 'Child Rights & Child Development in India: A Regional Analysis', *Indian Journal of Regional Science*, 2013, p.16.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Bhakhry* (n 8) p.21.

¹⁰⁸ *Ibid.*, p.24.

¹⁰⁹ *The Children Act*, 1960, India.

¹¹⁰ '40 Years of Alma-Ata: Steps India Can Take to Achieve 'Health for All'', *Business Standards* available at https://www.business-standard.com/article/current-affairs/40-years-of-alma-ata-steps-india-can-take-to-achieve-health-for-all-118090200095_1.html accessed on 24 November 2020.

¹¹¹ Sanjib Dutta & Subhadra K. 'Development of Women and Children in Rural Areas (DWCRA): A Microfinance Success Story in Andhra Pradesh (India)' *IBS Center for Management Research*, 2004, available at <https://www.thecasecentre.org/main/products/view?id=19364> accessed on 24 November 2020.

awards have also been established for better implementation and increasing the effectiveness of Child rights.

India has enacted numerous laws and policies for the realization of child rights. It has been credited for the same internationally,¹¹² but there is still a lot that needs to be done. The amendment in the Juvenile Justice Act was brought so that children of 16-18 years, after their mental assessment, could be tried as adults if they have committed serious crimes resulting in the same punishments as adults. Children below the age of 14 were not allowed to work, but the government added a proviso that they could do so in family enterprises after school hours. Further, the right to education provided under the specific act is only for children from 6-14 years; it is silent for children pre- and post-age groups.¹¹³ Coordination and collaboration between various ministries is another challenge in the realization of the rights of children in India. The data relating to children in India is confusing and incomplete, thus, children's rights are not ensured to the maximum. Another issue is that the government budget for children is around 5%, and the Indian government has never spent more than 5% on the protection and promotion of children's rights, an example being in 2019-2020 it was only 3.29%.¹¹⁴ Participation and involvement of civil society organizations are also restricted in developing laws and policies for children. The policies and plans are there, but the practical implementation is lacking because India has a federal structure. Different states were to develop their strategies for children, and there has been a delay in doing so by the states.

E. Nepal

Nepal ratified the CRC in 1990 and has become party to the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OPAC), 2000, and Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC), 2000¹¹⁵. The promulgation of the Children Act 1992 was a result of the domestication of the convention. The Constitution of Nepal 2015 guarantees children's rights as fundamental rights.¹¹⁶ Along with recognition of various other rights, the formation of the Central Child Welfare Board and

¹¹² 'The South Asian Report on the Child-friendliness of Governments', *Save The Children*, 2013, available at https://resourcecentre.savethechildren.net/node/7772/pdf/the_south_asia_report_lowres.pdf, accessed on 2 April 2020.

¹¹³ UNCRC India, *Concluding Observations of the CRC Committee*, 7 July 2014, CRC/C/OPAC/IND/CO/1.

¹¹⁴ Mini Shrinivasan, 'India's children: Where do we stand?', *HAQ Center For Child Rights*, 2019, available at <https://www.haqcrc.org/wp-content/uploads/2020/01/childrens-version-status-report.pdf>, accessed on 5 April 2020.

¹¹⁵ 'Ratification Status for Nepal', *United Nations Human Rights Office of High Commissioner*, available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=122&Lang=EN, accessed on 24 November 2020.

¹¹⁶ These rights include, Article 39 Rights of the Child, Article 18 Right to Equality, Article 29 Right against Exploitation, Article 30 (1) Right to Clean Environment, Article 31 Right to Education, Article 35 Right to Health, Article 43 Right to Social Security, Article 51(i) Policies relating to labor and employment: (3) To abolish all forms of labor exploitation including child labor, Article 51 (j) Policies relating to social justice and inclusion: (4) To evaluate economically the work and contribution such as maintenance of children and care of families. (5) To take into consideration primarily the best interests of the child.

socialization centers for rescued children with the agenda of making Kathmandu city with no street children¹¹⁷ was noteworthy. The National Plan of Action decade for children began in 1990¹¹⁸. The 10-year-long civil war of the state affected almost every sector, but the most vulnerable were children. Hence, various legislations were drafted to address the issue.

Besides, there are more than 40 laws related to child rights in Nepal¹¹⁹. One of the notable Acts being: The Breast Milk Substitution Act of 2049, where utter importance was given to the child's health and nutrition. Child Labor (Prohibition and Regulation) Act, 2000 and Regulations, 2006 is another significant achievement by Nepal for the protection and promotion of Child Rights.¹²⁰ Juvenile Justice (Procedures) Regulation, 2063, where child delinquency was differentiated from crime. Along with these issues of adoption, human trafficking, pornography, and rape have also been addressed by various laws. Nepal has also adopted various other relevant policies and strategies, relating to the protection of children, such as National Health Policy 2014, National Child Policy 2012, National Policy and Plan of Action on Disabilities 2006.¹²¹

The recent Children's Act, 2018 provides for the rights and implementation of CRC obligations. The Act further provides for the establishment of the National Child Rights Council and child rights committees on state and local levels, including the establishment of a Child Welfare Authority at the local level¹²². The idea of a conducive environment for the growth of children has been highly emphasized in the 14th periodic plan (2016/017-2019/020)¹²³. Along with these, the implementation of child rights can be seen in initiatives like the operation and management of the National Center for Child at risk¹²⁴, child Helpline¹²⁵, etc. Along with that, special protection and rights are guaranteed to the children from marginalized communities and of the children who are in prison with their parents and refugee children. The shift of focus on the analysis of child-related

¹¹⁷ 'Government of Nepal, Ministry of Women, Children and Social Welfare Central Child Welfare Board' available at <http://www.ccbw.gov.np/uploads/Resource/Brochure/brochure%20cenral%20child%20welfare%20board.pdf>, accessed on 25 November 2020.

¹¹⁸ 'State of Children in Nepal', *Government of Nepal, Ministry of Women, Children and Social Welfare, Central Child Welfare Board*, 2017, p.7, available at <https://npc.gov.np/images/category/14th-plan-full-document.pdf>, accessed on 25 November 2020.

¹¹⁹ 'Central Child Welfare Board: State of Children in Nepal 2017', *Government of Nepal, Ministry of Women, Children and Social Welfare*, 2017, p. 5 available at <https://www.thecasecentre.org/main/products/view?id=19364> accessed on 25 November 2020.

¹²⁰ Uddhav Raj Poudyal, 'Status of Rights of the child in Nepal-An Analysis of Monitoring Data From 20 Districts', *Children and Women in Social Service and Human Rights (CWISH)*, 2017, p. 1.

¹²¹ UNCRC Nepal, *Concluding Observations of the CRC Committee*, 8 July 2016, CRC/C/NPL/CO/3-5, p.12.

¹²² *Balbalika Sambandhi Ain 2075* (Act Relating to Children 2018) ss. 59-61.

¹²³ '14th Periodic Plan, FY 2073/74-2075/76', *National Planning Commission*, Government of Nepal, 2016.

¹²⁴ 'National Centre for Children at Risk', *Nepal Business Directory*, available at https://www.nepalyp.com/company/32480/National_Centre_for_Children_at_Risk, accessed on 25 November 2020.

¹²⁵ 'Child Helpline-1098', *Child Workers in Nepal*, available at <https://www.cwin.org.np/index.php/programme-of-actions/child-helpline-1098> accessed on 25 November 2020.

budget¹²⁶ has played a significant role in improving the situation.

Nepal has gone through a significant political and legal transformation over the last 30 years, and despite the political instability, it has made extensive efforts to establish strategic policy and legal frameworks for the realization of children's rights. However, the efforts have not yielded the expected results as per the obligations under the CRC. Nepal lacks proper and systematic enforcement mechanisms of the laws and policies.¹²⁷ Violations of the rights of children are a serious concern in the country, ranging from issues of child labor, corporal punishment, health services, neglect, child marriage, discrimination based on ethnicity, etc. The failure to implement the existing laws and policies in light of the existing challenges before the Nepalese government is one of the biggest challenges to fulfilling obligations under the CRC. Further, its transition from a unitary model to a federal structure is another reason for challenges in implementation.¹²⁸

F. Pakistan

Pakistan ratified the CRC in 1990, and its constitution guarantees fundamental rights to all citizens.¹²⁹ The 18th Amendment to the Constitution in 2010 delegated administrative and legislative powers to the provinces in Pakistan on issues relating to the rights of children. The Ministry of Human Rights was established in 2015, which proposed the establishment of a National Commission on the Rights of the Child. The bill was passed in 2017, although the Commission is yet to be established.¹³⁰ Having said that, the existence and efforts of the National Commission for Child Welfare and Development (NCCWD)¹³¹ and the Child Protection & Welfare Bureau of Pakistan¹³² for the betterment of the status quo

¹²⁶ *Central Child Welfare Board*, (n 116), pp. 9-10.

¹²⁷ Kiran Rupakhetee, 'An Overview of Policy, Plans and Programmes of the Government of Nepal in Relation to Rights of the Child', *Children and Women in Social Service and Human Rights (CWISH)*, 2017, p. 13.

¹²⁸ Although, Madhu Prasad Regmi, Secretary, Ministry of Women, Children and Social Welfare, Government of Nepal in his 2016 presentation to the Committee on the Rights of Child noted that the shift from federal to unitary governance model would empower local level governance for the better and would help Nepal in future for addressing the various concerns Nepal faced in implementation of its obligation under the CRC.

¹²⁹ Constitution of the Islamic Republic of Pakistan 1973, Article 3 provides prohibitions against torture and all form of exploitation and Article 9 and 14 states that an individual's rights to life, liberty and dignity are considered inviolable. Article 33 discourages all kinds of parochial, racial, tribal, sectarian, and provincial prejudices among citizens. Articles 34 and 35 allow participation of women in all spheres of life, along with protection of marriage, the family, mothers and children. Article 11(1) forbids slavery and trafficking. Article 11(3) prevents employment of children under the age of 14. Right to free and compulsory education to all children between the ages of 5 and 16 has been provided for through the amendment of constitution in 2010 under Article 25A.

¹³⁰ Mehnaz Aziz, 'The rights of the Pakistani Child', *The News*, 28 February 2019, available at <https://www.thenews.com.pk/print/437731-the-rights-of-the-pakistani-child>, accessed on 10 April 2020.

¹³¹ 'The National Commission for Child Welfare and Development (NCCWD)', *Ministry of Human Rights, Government of Pakistan* available at <http://www.mohr.gov.pk/Detail/MzFjMTM5ODctODkwYS00NTUyLTk2NjQtMmNjZjEwNzJlN2Fk> accessed on 25 November 2020.

¹³² 'Child Protection and Welfare Bureau', *CPWB*, available at <https://cpwb.punjab.gov.pk>, accessed on 26 November 2020.

of children in Pakistan cannot be denied.

The Employment of Children Act, of 1991 is one of the first legislations codifying the laws protecting child rights¹³³. However, it could not curb the intended child labor as expected. Various laws passed by the provinces relating to the rights of children are the Punjab Destitute & Neglected Children Act 2004, Punjab Restriction on Employment of Children Act 2016, Punjab Domestic Workers Act 2019, Sindh Child Protection Authority Act 2011, Balochistan Child Protection Act 2016, and KP Child Protection & Welfare Act, 2010. Besides, Pakistan has also reflected its commitment to the protection of child rights by ratifying other international instruments like the World Congress against Commercial Sexual Exploitation of Children, signed in 1996, and Elimination of the Worst Form of Child Labor Convention (C182), ratified in 2001¹³⁴.

Various programs have also been initiated, the oldest being Bait-ul-Mal, which provides support and assistance to orphans¹³⁵. Tawana project-school nutrition program focuses on school enrollment and the nutrition of children¹³⁶. Similarly, for funding the education of children's programs like Waseela-E-Taleem under Benazir Income Support Programme has also been effective in addressing the issues¹³⁷. It further supports the attainment of Sustainable Development Goals. Child labor issues were considered in the National Plan of Action and Policy for the elimination of child labor, 2000¹³⁸. Also, various organizations in Pakistan have played a crucial role in thematic areas like Ansar Burney Welfare Trust International¹³⁹ which played a significant role in addressing the issues of trafficked children.

Pakistan has made significant strides in children's issues. It is, however, essential to recognize that despite strides made over the years, there is still much to be done.¹⁴⁰ About 1 child out of 6 still dies before the age of 5¹⁴¹. The Committee on the Rights of Child in its fifth periodic report has raised concerns regarding the delay in the implementation process of the obligations under the CRC. The National Commission on the Rights of Children is yet to be formally established

¹³³ *Employment of Children Act*, 1991, Pakistan.

¹³⁴ Berti, Stefano, 'Rights of the Child in Pakistan', *Refworld*, 2003, p.3, available at <https://www.refworld.org/pdfid/46c190b40.pdf>, accessed on 26 November 2020.

¹³⁵ 'Pakistan Bait-Ul-Mal Projects', available at <http://www.pbm.gov.pk>, accessed on 26 November 2020.

¹³⁶ Badruddin, Salma Halai Badruddin et al. 'Tawana Project-School Nutrition Program in Pakistan-Its Success, Bottlenecks and Lessons Learned', *Asia Pacific Journal of Clinical Nutrition*, 2008, pp. 357-360.

¹³⁷ 'Waseela-E-Taleem, Benazir Income Support Programme', *Government of Pakistan*, available at <https://www.refworld.org/pdfid/46c190b40.pdf> accessed on 26 November 2020.

¹³⁸ '2012 Findings on the Worst Forms of Child Labor' *United States Department of Labor's Bureau of International Labor Affairs*, available at <https://www.refworld.org/pdfid/46c190b40.pdf>, accessed on 26 November 2020.

¹³⁹ 'Ansar Burney Trust International', available at <https://ansarburney.org>, accessed on 26 November 2020.

¹⁴⁰ 'Situation Analysis of Children in Pakistan', *Government of Pakistan & UNICEF*, 2017 available at <https://www.unicef.org/pakistan/reports/situation-analysis-children-pakistan>, accessed on 26 November 2020.

¹⁴¹ Manzoor Ahmad, 'Condition of Child Rights in Pakistan', *Global Regional Review*, 2018, p.346.

in 2017. There is a delay in the enactment of specific legislation relating to child protection. Even though the Islamabad Capital Territory Child Protection Act was passed in 2018, the government has yet to establish the 'Child Protection Advisory Board under the Act.¹⁴² The provincial legislation protecting the rights of children also needs enforcement as even though there are existing laws in provinces, their effective enforcement is lacking. Allocation of proper resources towards children's rights at both national and provincial levels is another reason for the failure of implementation of existing policies. There is an immediate need for addressing issues such as parental negligence, corporal punishment, child marriages¹⁴³, etc. through legal and policy measures having implementation and monitoring mechanisms.¹⁴⁴ There is a need for a thorough legislative review for compliance and conformity of existing and future laws with CRC, and this shall provide a necessary push for the realization of children's rights in Pakistan.¹⁴⁵

G. Sri Lanka

Sri Lanka ratified the CRC in 1991, and its constitution promotes the rights and interests of children and youth.¹⁴⁶ Sri Lanka does not have specific legislation directly implementing its obligations under the CRC. However, it adopted a charter on the Rights of Child in 1992 and over the last few years has adopted various policies and legislations. During the 1970s, the principle of primary health care was adopted.¹⁴⁷

Although there was a prolonged conflict between the 1980s-2009, the rights of children were sustained along with providing the children with the right to education and health.¹⁴⁸ National Child Protection Authority Act 1998¹⁴⁹ was the first legislation to create an institutional framework namely the National Child Protection Authority which acted as an ombudsman for child rights in Sri Lanka. For considering the rights of children in conflict with laws, the Children and Young Persons Ordinance¹⁵⁰ had been adopted. Similarly, in order to address

¹⁴² Mehnaz Aziz, 'The rights of the Pakistani Child', *The News*, Pakistan, 28 February 2019, available at <https://www.thenews.com.pk/print/437731-the-rights-of-the-pakistani-child>, accessed on 10 April 2020.

¹⁴³ Ettie Bailey-King, 'The Side of Pakistan You Don't See', 2019, *Girls Not Brides*, available at <https://www.girlsnotbrides.org/the-side-of-pakistan-you-dont-see/>, accessed on 10 April 2020.

¹⁴⁴ Yagmur Ozturk, 'Realizing Children's Rights in Pakistan', *Humanium*, available at <https://www.humanium.org/en/pakistan/>, accessed on 10 April 2020.

¹⁴⁵ UNCRC Pakistan, *Concluding Observations of the CRC Committee*, 11 July 2016, CRC/C/PAK/CO/5.

¹⁴⁶ Article 27(13) states that the state shall promote with special care the interests of children and youth, so as to ensure their full development, physical, mental, moral, religious and social, and to protect them from exploitation and discrimination and Article 27 (2) (g) provides for complete eradication of illiteracy and the assurance to all persons the right to universal and equal access to education at all levels.

¹⁴⁷ Hiranthi Wijemanne, 'Reflections on Child Rights in Sri Lanka, during the Past 25 Years', *The Sunday Times*, 12 October 2014, available at <https://mfa.gov.lk/reflections-on-child-rights-in-sri-lanka-during-the-past-25-years/>, accessed on 26 November 2020.

¹⁴⁸ Ibid.

¹⁴⁹ *National Child Protection Authority Act*, 1998, Sri Lanka.

¹⁵⁰ 'Children and Young Persons Ordinance', *Sri Lanka Law* available at <https://www.srilankalaw.lk/Volume-II/children-and-young-persons-ordinance.html>, accessed on 26 November 2020.

the issues of child labor, an Act to Regulate the Employment of Women, Young Persons, And Children, 1956¹⁵¹ has been promulgated in Sri Lanka.

National Plan of Action for Children (2016-2020), the National Plan of Action to address Sexual and Gender-Based Violence (2016–2020), National Policy on the Elimination of Child Labor, 2017, the National Policy on Early Childhood Care and Development, the National Plan of Action on the Prevention of Child Abuse, 2016, Plan of Action on Social Protection of Children (2016-2019), National Strategic Plan on Child Health (2018-2025), the National Strategic Plan on Maternal and Newborn Health, and the National Child Protection Policy¹⁵². The optional protocol on the sale of children, child prostitution, and child pornography is ratified by Sri Lanka. It is also a party to UN Security Council Resolution 1612 on children affected by armed conflict in order to address the issues of children affected during the civil war. Draft a National Policy on Alternative Care for Children with the long-term goal of preventing institutionalization and progressively eliminating long-term institutional care except in special circumstances.

Sri Lanka's commitments and steps taken so far have been consistent, and there is a significant improvement in the situation of children; however, there remains a shortfall in its commitments towards the CRC. The institutional, political, and legal frameworks need coordination and effective strategies for implementation. Challenges remain in areas of equal education, health, prevention against violence, discrimination, and exploitation along with poor coordination in child protection.¹⁵³ Draft Child Protection and Justice Bill are pending, which will repeal sections not in conformity with the CRC in Children, and Young Persons Ordinances.¹⁵⁴ Sri Lanka has gone through a long civil war, and its political, and legal transformation has been an impediment in the realization of its commitments under CRC, and issues like child marriage, and missing children need comprehensive legislation for such realization.

H. Maldives

Maldives ratified the CRC in 1991, and its 2008 constitution provides for a robust framework for promoting the welfare of children's rights guaranteeing non-discrimination and assistance of the state.¹⁵⁵ The Maldives passed the important Child Rights Protection Act, 2019 making substantial changes in the legal protection of children, prohibiting child marriage below the age of 18 and the death penalty for children and further forbidding child labor. Also,

¹⁵¹ *Employment of Women, Young Persons and Children*, 1956, Sri Lanka.

¹⁵² These laws provide guidelines for the government for collaboration and coordination among various agencies along with mechanisms to identify the children at risks.

¹⁵³ 'The Situation of Children in Sri Lanka', *UNICEF Sri Lanka*, available at <https://www.unicef.org/srilanka/situation-children-sri-lanka>, accessed on 10 April 2020.

¹⁵⁴ UNCRC Sri Lanka, *Concluding Observations of the CRC Committee*, 2018, CRC/C/OPSC/LKA/CO/1.

¹⁵⁵ UNCRC Maldives, *Concluding Observations of the CRC Committee*, 14 March 2016, CRC/C/MDV/CO/4-5.

the Prevention of Sexual Harassment and Abuse Act, Prevention of Domestic Violence Act, and Sexual Offences Act strengthen its legislative framework for the protection of children. Various child rights-related bills like juvenile justice bill, gender equality bill, and social work bills are before the parliament to be passed.¹⁵⁶

Special Measures for Perpetrators of Child Sexual Abuse 2009¹⁵⁷, has increased the severity of punishment for the perpetrators. In order to address the issue of education and to consider early childhood education as mandatory Pre-Schools Act 2012¹⁵⁸ has also been introduced. Minimum Standards for Children's Home, 2007 have also been introduced to secure the rights of the child. In order to strengthen the database of the children and their position, the Maldives Child Protection Database (MCPD) was established in 2010¹⁵⁹. Concepts of foster homes either it be traditional and religious like Kafalah¹⁶⁰ owned by the community or Kudakudhinge Hiya,¹⁶¹ Amaan Hiya owned by the state are strengthened to take care of the child in need or orphans. The Education and Training Centers for Children (ETCC)¹⁶² have also been providing various kinds of training and other facilities for the children in order to increase their competence. Progress and achievements by the Maldives with respect to the protection and promotion of child rights have been noteworthy, and the establishment of specialized institutions like family and juvenile courts has been appreciated by the international community. It has only recently passed the all-important legislation in the protection of child rights, but the challenge that remains is its implementation and monitoring of the situation of child rights. Geographical restraints are a big challenge as children grow up in remote islands away from the mainstream population without the necessary policy structures available for them¹⁶³. Further issues of health, education, violence, alternative

¹⁵⁶ 'Alternative Report on the Implementation of the Convention on the Rights of the Child', 2015, Maldives, *Advocating the Rights of Children (ARC)*, available at <https://tinyurl.com/mud25zwa>, accessed on 10 April 2020.

¹⁵⁷ 'Committee on The Rights of The Child Consideration of Reports Submitted by The States Parties Under Article 44 of The Convention, Republic of Maldives', *United Nations, CRC/C/MDV/4-5*, 2012, p.6.

¹⁵⁸ 'Maldives Education Sector Plan 2019-2023, Ministry of Education & Ministry of Higher Education Republic of Maldives', *Global Partnership*, 2019, p.32, available at <https://www.globalpartnership.org/sites/default/files/2019-05-maldives-education-sector-plan-2019-2023.pdf>, accessed on 27 November 2020.

¹⁵⁹ 'The Ministry of Gender and Family Establishes the Maldives Child Protection Database (MCPD)', *Gender Gov*, 29 September 2016, available at <http://gender.gov.mv/en/?p=1647>, accessed on 27 November 2020.

¹⁶⁰ Usang Mand Assim and Julia Sloth Nielsen, "Islamic Kafalah as an Alternative Care Option for Children Deprived of a Family Environment", *African Human Rights Law Journal*, 2014, volume 14:2.

¹⁶¹ 'Maldives Children's Home (Kudakudhinge Hiya)', *Simply Giving*, available at <https://www.simplygiving.com/nonprofit/KudakudhingeHiya>, accessed on 27 November 2020.

¹⁶² "Submission from the Human Rights Commission of the Maldives for the Combined Fourth and Fifth Periodic Report of The Republic of Maldives under the United Nations Convention on Rights of The Child (CRC) Committee Pre- Sessional Working Group Meeting". *Human Rights Commission of the Maldives*, 2015, p.13.

¹⁶³ 'Child Protection', *UNICEF Maldives*, available at <https://www.unicef.org/maldives/what-we-do/child-protection>, accessed on 10 April 2020.

care, and identity still need necessary policy interventions. Although laws are there, the implementing mechanisms are either missing or not functioning.¹⁶⁴

It is important to note that the legislative and policy frameworks in South Asian countries do exist and they are comprehensive and substantial in nature.¹⁶⁵ The international commitments of the South Asian states do not limit them to CRC alone, but the states are also party to core human rights treaties¹⁶⁶ and thus, are under increased responsibility obligation for the realization of the rights of children through them as well. The status of South Asian countries vis-à-vis ratification of CRC and its three optional protocols is enumerated in the table below.

	CRC, 1990 ¹⁶⁷	OP-CRC-AC, 2002 ¹⁶⁸	OP-CRC-SC, 2002 ¹⁶⁹	OP-CRC-IC, 2014 ¹⁷⁰
Afghanistan				NA
Bangladesh				NA
Bhutan				NA
India				NA
Nepal				NA
Pakistan				NA
Sri Lanka				NA
Maldives				

The table above shows a promising picture as all countries in South Asia have ratified the convention and the two initial protocols however, all of them need to ratify OP-CRC-IC, 2014 with Maldives being an exception. The countries are constrained in the implementation of existing legislations and policies due to a variety of reasons ranging from political instability, resource mobilization, cultural diversity, and geographical difficulties to name a few. Thus, the excellent work done over the last 30 years still needs effective implementation for the

¹⁶⁴ *Alternative Report of Maldives* (n 153).

¹⁶⁵ 'The Legal Framework for Child Protection in South Asia', UNICEF, 2020, available at https://www.unicef.org/rosa/media/5906/file/The_legal_framework_for_child_protection_in_south_asia.pdf, accessed on 10 April 2020.

¹⁶⁶ For the purpose of this paper only CRC has been looked at. There are 9 core international human rights instruments. Some of the treaties are supplemented by optional protocols regarding specific issues. There are in total 18 International Human Rights Treaties. South Asian countries have ratified as following out of the total 18 treaties Afghanistan (11), Bangladesh (12), Bhutan (4), India (8), Nepal (13), Pakistan (9), Sri Lanka (14) and Maldives (13), as per the OHCHR on 10th April 2020.

¹⁶⁷ Convention on the Rights of Child Adopted and opened for signature, ratification, and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49.

¹⁶⁸ *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, 12 February 2002, A/RES/54/263, 25 May 2000.

¹⁶⁹ *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, 18 January 2002, A/RES/54/263, 25 May 2000.

¹⁷⁰ *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, 14 April 2014, A/RES/66/138, 19 December 2011.

realization of rights of a quarter of the world's children.

V. The Situational Analysis of Children in South Asia

Early marriage, trafficking, child labor and crimes against children continue to make South Asian children unprotected and vulnerable.¹⁷¹ Poverty and discrimination based on socio-economic status and gender are some issues that have an impact on the child's access to health, nutrition, education, and most importantly, their protection.¹⁷² Not only do the socio-economic and cultural contexts, but the political situations also matter in the violations of rights. South Asian countries have diverse kinds of ethnic, cultural, and religious groups and geographical, political, and economic backgrounds. Despite the diversity, the South Asian countries share a similar socio-economic condition. The diversity in ethnic, cultural, and geographical features that South Asia has is its unique traits, but of course, these make them face challenges in terms of development. Political instability, inequality, poverty, and natural disasters are some of the constraints responsible for the inadequate level of developmental work being carried out. For this part, the paper identifies seven key issues discussed herein with the analysis of the factual and legal situation in South Asian countries along with suggestions.¹⁷³

1. Gender

Factual Situation: South Asia is home to almost 295 million girls and 325 million boys and, in all countries; there are more boys than girls. For every 10 boys, there are 9 girls under the age of 18 years.¹⁷⁴ As per the 2018 Human Development Report of UNDP, the gender gap in South Asia is at 16.3% among the developing regions. The gender disparity in the region leads to a severe impact on health and nutrition with around 37% of girls¹⁷⁵ in the age group of 15-19 suffering from anemia and glaring female deaths.¹⁷⁶ Poor reproductive health remains a concern with high pregnancy in adolescents in Afghanistan, Bangladesh, Nepal, and Pakistan.¹⁷⁷ Female pre-natal sex selection and infanticide is a huge problem

¹⁷¹ Eliana Riggio Chaudhari, 'Regional Overview: Combating the sexual exploitation of children in South Asia. Evolving trends, existing responses and future priorities', 2017, *ECPAT International*, available at https://www.ecpat.org/wp-content/uploads/2018/03/Regional-Overview_South-Asia.pdf, accessed on 10 April 2020

¹⁷² South Asia in Action: Preventing and Responding to Child Trafficking Analysis of Anti-Trafficking Initiatives in the Region, *UNICEF Innocenti Resource Centre*, 2009, available at https://www.unicefirc.org/publications/pdf/ii_ct_southasia_analysis.pdf, accessed on 10 April 2020.

¹⁷³ It is important to note that this part of the paper draws its inspiration from the latest report on 30 years of child rights in South Asia launched by UNICEF in August 2019.

¹⁷⁴ 'Gender Counts: A quantitative assessment of gender inequality and its impact on girls and boys in South Asia', *UNICEF Bangkok*, 2019, available at https://asiapacific.unfpa.org/sites/default/files/pubpdf/Gender%20Counts_South%20Asia.pdf, accessed on 10 April 2020.

¹⁷⁵ 'Global Burden of Disease Study', *Institute for Health Metrics and Evaluation (IHME)*, 2016, available at <http://ghdx.healthdata.org/record/ihme-data/gbd-2016-covariates-1980-2016>, accessed on 10 April 2020.

¹⁷⁶ Every year, there are 239,000 female deaths under 5 in India, please see Chirstophe Z Guilmoto, Nandita Saikia, Vandana Tamrakar & Jayanta Kumar Bora, 'Excess Under-5 Female Mortality Across India: A Spatial Analysis Using 2011 Census Data', *The Lancet Global Health*, 2018, volume 6:6.

¹⁷⁷ UNICEF Pakistan, *Situation Analysis of Children in Pakistan*, 2017, available at <https://www.unicef.org/pakistan/media/596/file/Situation%20Analysis%20of%20Children%20in%20Pakistan.pdf>, accessed on

in the region¹⁷⁸. Suicide rates among girls are higher in Bangladesh, India, and Pakistan and it's higher for boys in Afghanistan, Bhutan, and Maldives.¹⁷⁹ Gender inequality also leads to a significant impact on education and the protection of children in the region.¹⁸⁰ The idea of inferiority in girl children since childhood, along with structural inequalities leads to serious disadvantages¹⁸¹ for girls some of them being rape, sexual abuse, and domestic violence.

Legal Situation: Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, for the prevention of female feticide has been codified in India¹⁸². Legislative infrastructure and policies in the region relating to the gender dimension require relevant policies and laws to be made in Afghanistan and Bangladesh; (UNCRC)¹⁸³ contradictory faulty and/or discriminatory policies need to be changed mainly in Afghanistan, Maldives, and Pakistan (UNCRC)¹⁸⁴ and there is a lack of effective implementation in all eight countries.¹⁸⁵

Suggestions: Legal and policy reforms are needed in most countries to remove deep-rooted gender discrimination; accessibility and availability of services such as education, health, etc. should be made available for all. Protection, monitoring, and implementation mechanisms in all countries need to be strengthened and made effective. Policies on the prevention of violence against girl child should be clear and effectively implemented. The systematic and coordinated dissemination of information regarding the rights and responsibilities concerning the protection and well-being of children is crucial. Human resources and people involved in such mechanisms need to be adequately educated and trained to equip them with international, regional, and national protection frameworks. Coordination among the South Asian countries for best practices should be increased.

2. Education

Factual Situation: Education is one of the utmost requirements of humans. It

10 April 2020.

¹⁷⁸ 'Convention on the Rights of the Child, Gender Considerations in the Application of the CRC', *UNICEF*, 2019, p.13.

¹⁷⁹ 'Global Burden of Disease Study', *Institute for Health Metrics and Evaluation (IHME)*, 2016, available at <http://ghdx.healthdata.org/record/ihme-data/gbd-2016-covariates-1980-2016>, accessed on 10 April 2020.

¹⁸⁰ 'The Legal Framework for Child Protection in South Asia', *UNICEF*, 2020, pp. 7-10.

¹⁸¹ Considering the magnitude of deteriorating situation of all forms of gender-based discrimination, exploitation and violence against the girl child, the fourth world conference on women held in Beijing in 1995 adopted a comprehensive strategic objective and the actions to be taken by the government (*Beijing Declaration and Platform of Action* 1995, paras 259-285).

¹⁸² *The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act*, 1994, India.

¹⁸³ *Concluding Observations of the CRC Committee*, Afghanistan, 2011, para. 23; Bangladesh, 2015, para. 42.

¹⁸⁴ *Concluding Observations of the CRC Committee*, Afghanistan, 2011, paras. 25, 40 (d), 41; Maldives, 2016, paras. 26 (b), 40, 44 (f); Pakistan, 2016, paras.18 (b).

¹⁸⁵ *Concluding Observations of the CRC Committee*, Afghanistan, 2011, paras. 47, 55 (b), 70 (b), 72; Bangladesh, 2015, paras. 42, 44, 74, 78; India, 201, paras. 49 (a), 51; Maldives, 2016, paras. 44 (a), 46, 66; Nepal, 2016, paras. 34 (a), 39, 68, Pakistan, 2016, paras. 16, 36 (c), 38, 51, 75; Sri Lanka, 2018, paras. 23 (b), 41.

has been regarded as a basic fundamental right. During the past two decades, South Asia has achieved remarkable advancements in providing access to education, resulting in a significant reduction in the number of out-of-school children at the primary and lower secondary levels. In 2017, the figures dropped to 11.6 million and 18.3 million, respectively, from their 1999 levels of 36 million and 38 million.

The lack of a relevant curriculum and poor quality of education is the reason for significant dropouts. UNESCO Education for all report of 2013-14 states that 2 out of 3 children who reach grade 4 are not learning basics. Children from marginalized communities face significant barriers in access to education as they belong to low-income families, are migrants, ethno-linguistic minorities, are forced into child labor and have disabilities. The likeliness of girl child to be enrolled in secondary level is lesser than boys in the region¹⁸⁶. Education curriculum need to conform with all and not be discriminatory. For instance, in India, the shortage of qualified teachers and the absence of teachers leads to a low quality of education. Poor Sanitation, water, electricity, or even classroom facilities in most countries are issues of glaring concern.

Legal Situation: National Policy on Education in India was brought in 1986¹⁸⁷. India enacted and enforced 'Right of Children to Compulsory Education'¹⁸⁸ in 2009.

Sri Lanka raised the age of children to remain in school from 14 to 16¹⁸⁹ and Maldives draft education bill introduced a similar provision for compulsory education till grade 10, i.e., 15 years.¹⁹⁰ The Constitution of Nepal¹⁹¹ guarantees the Right to Child as a fundamental right. Similarly, in 2075 B.S., the Act relating to Compulsory and Free Education¹⁹² was enacted by the Federal Parliament in Nepal. Similarly, the Constitution of India guarantees free and compulsory primary education to children of age group 6-14 as a fundamental right¹⁹³ which is in line with Articles 45 and 51A are a couple of recent positive progress made in the realization of children's rights, but the situation remains alarming. The implementation in the countries is limited despite existing frameworks due to resource constraints. Delays in enacting essential education-related legislation have

¹⁸⁶ 'Convention on the Rights of The Child, Gender Considerations in the Application of the CRC', *United Nations Children's Fund Regional Office for South Asia*, 2019, p.7.

¹⁸⁷ *Bhakhry* (n 8), p. 28.

¹⁸⁸ 'The Right of Children to Free and Compulsory Education'. *Education Gov*, 2009, available at https://www.education.gov.in/sites/upload_files/mhrd/files/upload_document/rte.pdf, accessed on 27 November 2020.

¹⁸⁹ UNCRC Sri Lanka, *Concluding Observations of the CRC Committee*, 3 July 2019, CRC/C/OPSC/LKA/CO/1, p. 10-11.

¹⁹⁰ UNCRC Maldives, *Concluding Observations of the CRC Committee*, 14 March 2016, CRC/C/MDV/CO/4-5, p. 15.

¹⁹¹ *Nepalko Sambidhan* (Constitution of Nepal).

¹⁹² *Anivarya Tatba Nisulka Sikshya Sambandhi Ain 2075* (The Act Relating to Compulsory and Free Education 2018), Nepal.

¹⁹³ 'Right To Education - Article 21(A)', *Legislative Service India*, available at <http://www.legalserviceindia.com/legal/article-70-right-to-education-article-21-a.html>, accessed on 27 November 2020.

been observed in Bangladesh, Bhutan, Maldives, and Nepal. The program called Nutritional Support to Primary Education or mid-day meal has been started in countries like India¹⁹⁴ and Nepal¹⁹⁵.

Suggestions: Developing comprehensive guidelines on education through strategic policies and legislation is the need of the hour in South Asian countries. Existing laws and policies need to be streamlined and implemented effectively with proper monitoring mechanisms. Education needs to be an important part of budgetary consideration, emphasizing the equity-based approach for each country, and the quality of education should be in focus. Discrimination within educational institutions should be subject to penalties, and policies should prioritize disadvantaged communities. Programs and training should be developed, focusing on teacher education and curriculum development. Technology and innovation should be given priority, and partnerships with non-state actors should be increased.

3. Early Childhood Development

Factual Situation: Early Childhood Care Development (ECCD/ECD) means the cognitive, linguistic, socio-emotional, and physical development of a child from the prenatal stage until eight years.¹⁹⁶ It is basically concerned with nutrition, protection, and stimulation. In recent years, research has proved that the child's rapid development occurs within the first eight years. Serious concerns about poor nutrition and malnutrition at the early age of children have been raised in South Asia.¹⁹⁷ In South Asia 2 out of 5 children are victims of stunting¹⁹⁸. This has hindered the cognitive potential of the child. Also, the behavioral conscience of an individual is highly impacted by early childhood development.

Legal Situation: South Asian countries have been adopting policies for the ECD¹⁹⁹ and have shown real political and legal commitments²⁰⁰. For example, in Pakistan, the Care of Child Development program was run where parents and

¹⁹⁴ Bhakbry n (8).

¹⁹⁵ 'Joint Action Plan 2071/72 – 2076/77, School Health and Nutrition', *Government of Nepal Ministry of Health and Population Ministry of Education*, available at http://www.chd.gov.np/downloads/5%20SHNP_Joint%20Action%20Plan_2071-72%20to%20076-77_English.pdf, accessed on 27 November 2020.

¹⁹⁶ 'Convention on The Rights of Child, celebrating 30 years in South Asia 1989-2019', *United Nations Children's Fund Regional Office for South Asia*, available at <https://tinyurl.com/nhkensy4>, accessed on 27 November 2020.

¹⁹⁷ For details please see, *Concluding Observations of the CRC Committee*, Afghanistan, 2011, p.11; Bangladesh, 2015, p.11; Bhutan, 2017, p.8; India, 2014, p.14; Nepal, 2016, p.16; Pakistan, 2016, p.12; Sri Lanka 2018, p.10.

¹⁹⁸ Early Learning and Early Childhood Development, *UNICEF*, available at <https://www.unicef.org/rosa/what-we-do/education/early-learning-childhood-development>, accessed on 2 April 2020.

¹⁹⁹ 'Status of Civil Registration and Vital Statistics in South Asia Countries', *UNICEF*, 2018, available at https://www.unicef.org/about/annualreport/files/SA_ROAR_2017.pdf, accessed on 2 April 2020.

²⁰⁰ *Bangladesh: Comprehensive ECCD Policy*, 2013; *Bhutan: ECCD National Policy*, 2011; *India: National ECCE Policy*, 2013; *Sri Lanka: National Policy on ECCD*, 2018; *Afghanistan: Integrated Preschool Education Policy is under Discussion*; *Maldives: Preschool Act*, 2012; *Nepal: Education Act*, 8th edition. *ECD Strategy*; *Pakistan: National Education Policy*, 2009.

children were involved in interaction that led to cognitive and motor skills²⁰¹. This simulation showed that those with better nutrition and care had better early development.

Suggestions: The issue of high mortality rates under the age of 5 years and malnutrition need to be addressed immediately. South Asia is home to the world's largest share of stunted and wasted children. Comprehensive programs and frameworks need to be developed, ensuring quality services with accurate dissemination of information on care for children. Equal opportunity for education in EECD is paramount and adequate resources should be allocated for implementation of policies and programs. The development of advocacy and communication strategies at the national and regional levels is a must. Platforms should be developed for data sharing leading to improvement on all level's standards. One of the most important aspects is the improvement of the family environment where they grow. Better budgetary allocation is a must for a better outcome.

4. Children with Disabilities

Factual Situation: It is estimated that there are over 93 million children with disabilities in the world, and they are most vulnerable in any country. Rights available to children with disabilities are similar to any other children but what lacks is the access to such rights. Accessibility to education, proper physical environment, and school education are the main hindrances in South Asia. Limited special schools and their existence hidden along with specialized care institutions with no proper support services are an area of concern in the eight countries. In Nepal, 82% of persons with disabilities²⁰², and around 64% in Sri Lanka did not have access to assistive products such as sign language interpreters or wheelchairs, etc. and other welfare services²⁰³. Access to proper infrastructure and materials for children with disabilities were available to only 63% in India and 8% in Bangladesh in primary and lower secondary schools as per the UNESCO Institute for Statistics. Discrimination and stigmatization of children with disabilities in South Asian countries are cause for concern.²⁰⁴ There is a negative approach along with a lack of support services towards such children, including abandonment by parents.²⁰⁵

Legal Situation: Bangladesh and India have legislated general and disability-

²⁰¹ 'Early Childhood Development Briefing Book', UNICEF, May 2019, p.9, available at <https://weshare.unicef.org/Detail/2AMZIFTRKHA%C2%A0>, accessed on 2 April 2020.

²⁰² Disability and Development Report, Realizing the Sustainable Development Goals by, for and with persons with disabilities, *United Nations*, 2018, available at <https://www.un.org/development/desa/disabilities/wpcontent/uploads/sites/15/2018/12/UN-Flagship-Report-Disability.pdf>, p. 42, accessed 10 April 2020.

²⁰³ Ibid, p.88.

²⁰⁴ For details please see, *Concluding Observations of the CRC Committee*, Bangladesh, 2015, para. 52-53; Bhutan, 2017, para. 32; India, 2014, para. 62; Maldives, 2016, para. 54-55; Nepal, 2016, para 46-47; Pakistan, 2016, para 45-46; Sri Lanka, 2018, para. 29.

²⁰⁵ For details please see, *Concluding Observations of the CRC Committee*, India, 2014, para. 61; Pakistan, 2016, para. 45.

related laws, policies, and strategies promoting the mainstreaming of people with disabilities.²⁰⁶ UNESCO Institute for Statistics provides that Maldives is one of the only countries in South Asia to have adapted infrastructure and materials for students with disabilities in primary schools. The positive approach by all South Asian countries in ratifying the Convention on the Rights of Disabled Persons, 2008 except Bhutan, which has only signed it; has been encouraging. Also, South Asian states have brought policy and legislative frameworks in regard to children with disabilities.²⁰⁷

Suggestions: The existence of laws and policies is positive, but the implementation strategies in most South Asian countries lack to the extent that the exact data regarding children with disabilities is not available. Accessibility and approachability to health services, and education at primary and secondary schools have to be increased in these countries. The establishment of institutions, especially dealing with children with disabilities is a must, and providing necessary human and financial resources is the responsibility of governments. Better infrastructure and inclusive environment have to be developed in the days to come to ensure that vulnerability and discrimination can be eradicated, and this can only take place with collective political will.

5. Child Marriage

Factual Situation: Child Marriage is a serious problem in South Asian countries. It is home to almost 285 million child brides with one in ten boys marrying as a child in Nepal²⁰⁸ and six in ten girls marrying as a child in Bangladesh.²⁰⁹ There is a steady decline in figures over the last 30 years with 63% of women aged 20-24 being married before the age of 18²¹⁰ in 1985. The current figures come to around 30% with estimates of it being decreased to 20% by 2030. The situation of South Asian countries is quite different from each other with the least child marriages in the Maldives (2%), Sri Lanka (10%), Pakistan (18%), India (27%), Bhutan (31%), Afghanistan (35%), Nepal (40%) and worst being Bangladesh (59%).²¹¹ Child

²⁰⁶ Elizabeth Lightfoot & Sharyn Dezelar, 'The Experiences and Outcomes of Children in Foster Care Who Were Removed Because of a Parental Disability', *Children and Youth Services Review*, volume 62, 2015, pp. 22-28.

²⁰⁷ Afghanistan has introduced the 'National Strategy for Children with Disabilities' (2008) and the 'Law on the Rights and Privileges of People with Disabilities and Martyrs' Families' (2010); The Maldives has adopted the 'Protection and Financial Assistance to Persons with Disabilities Act' in 2010 and an inclusive education policy in 2012; Sri Lanka in 2016 ratified the Convention on the Rights of Persons with Disabilities.

²⁰⁸ Colleen Murray Gastón, Christina Misunas & Claudia Cappa, 'Child Marriage Among Boys: A Global Overview of Available Data', 2019, *Taylor & Francis*, pp. 219-228.

²⁰⁹ UNICEF Data, Child Marriage and Child Protection, *UNICEF*, 2019, available at <https://data.unicef.org/topic/child-protection/child-marriage/>, accessed 2 April 2020

²¹⁰ "Child Marriage". *UNICEF South Asia*, available at <https://www.unicef.org/rosa/what-we-do/child-protection/child-marriage>, accessed on 27 November 2020.

²¹¹ UNICEF Kathmandu, United Nations Children's Fund, *The Legal Framework for Child Protection in South Asia*, 2020, available at https://www.unicef.org/rosa/media/5906/file/The_legal_framework_for_child_protection_in_south_asia.pdf accessed on 10 April 2020; Based on most recently available Multiple Indicator Cluster Survey and Demographic Health Survey findings reports.

marriage brings other risks for children such as health issues due to pregnancy, sexual and domestic violence, etc.

Legal Situation: The minimum age of marriage for boys in South Asian countries is 18 years in Afghanistan, Bhutan, Maldives, Pakistan, and Sri Lanka with 20 years in Nepal and 21 years in Bangladesh and India. The minimum age for girls varies between 16 years (Afghanistan, Bhutan, Pakistan), 18 years (Bangladesh, India, Maldives, Pakistan (Sindh & Hindu Marriages), Sri Lanka) and 20 years (Nepal). There is no minimum age for boys and girls in case there is parental consent and court approval for marriages in Bangladesh²¹²; while in the Maldives it is after puberty²¹³ and for girls in Afghanistan, it is 15 years. Muslim marriages in Sri Lanka for both boys and girls do not have any minimum age if it is with the court's approval and parental consent. All countries in South Asia adopted the Regional Action Plan to End Child Marriage which was endorsed by the SAIEVAC.²¹⁴ There are national action plans on ending child marriage in Bangladesh, Nepal, and Afghanistan, and in India, some states have adopted policies, but there is discrimination in laws regarding the age of marriage among boys and girls. Full implementation of existing laws has a barrier due to personal laws allowing freedom to set own standards in India²¹⁵ and Sri Lanka self-regulation on religious and ethnic grounds.²¹⁶ There is a lack of legal framework in Pakistan for refugees, and their child registration process is poor, making them vulnerable.²¹⁷ Further, children who are married do not receive necessary protection under the child protection law of Maldives.²¹⁸

Suggestions: Over the years the situation has improved concerning child marriages in South Asian countries, but there is scope for a lot to be done and all the countries should make it a priority of the region. All countries should have uniform laws for the minimum age of marriage to be 18 or above for both boys and girls in conformity with the CRC. Discrimination in the age of marriage due to gender should be removed, and judicial and religious interventions should not be allowed. Laws should apply to all including those who are refugees or children who are married, and the registration of children at birth should be mandatory,

²¹² UNCRC Bangladesh, *Concluding Observations of the CRC Committee*, 30 October 2015, CRC/C/BGD/CO/5, para. 22.

²¹³ UNCRC Maldives, *Concluding Observations of the CRC Committee*, 14 March 2016, CRC/C/MDV/CO/4-5, paras. 46-47.

²¹⁴ 'South Asia Initiative to End Violence Against Children (SAIEVAC)', *Regional Action Plan to End Child Marriage in South Asia*, 2015, available at https://www.girlsnotbrides.org/wp-content/uploads/2018/01/RAP_Child_Marriage.pdf accessed on 10 April 2020.

²¹⁵ UNCRC India, *Concluding Observations of the CRC Committee*, 7 July 2014, CRC/C/OPAC/IND/CO/1, para. 51.

²¹⁶ UNCRC Sri Lanka, *Concluding Observations of the CRC Committee*, 3 July 2019, CRC/C/OPSC/LKA/CO/1, para. 1.

²¹⁷ UNCRC Pakistan, *Concluding Observations of the CRC Committee*, 11 July 2016, CRC/C/PAK/CO/5, paras 65-66.

²¹⁸ Article 28 - Protection of the Rights of the Child Act, 2019 provides for three exceptions under which a child is not entitled to any rights under this law which are; a child who enters a contract of marriage; a child who becomes a parent; and a child who is employed.

and marriage registration; should act as a medium of protection for children. Education and access to support services, including complaint mechanisms, should be made available across the region with better and proper implementation of existing policies and strategies. Child marriage could be rendered void, and such right should be given to the child if he/she so desires.²¹⁹ Awareness training and dissemination programs regarding the negative impact of child marriage should be done, and the same should be done taking care of the linguistic needs of the area or region.

5. Participation of the Young in Governance

Factual Situation: Young people in the age group of 10-19 years are around 20% of the total population of the region.²²⁰ It is a significant population which is important for the future of the region itself, and thus in these changing times, it is important that the governments in policy-making processes hear their views and concerns. Almost all countries in the region have dedicated ministries for the young. Further, there are associations and organizations of the young in all countries which have recognition from the government.²²¹ In Nepal's constitution-making process, children were duly involved, and their representations and concerns on areas such as education, health, protection, and development, etc. were addressed in the Constitution of Nepal as fundamental rights.²²²

Legal Situation: CRC under Article 12 of the convention provides the right to participation by the young as a fundamental right ensuring that the state parties should listen to the young on issues that concern them.²²³ The areas in which legislative policies provide for recognition of young as change-makers can be ascertained as to the figures such as the majority and voting age for all in South Asian countries is 18 years. Youth to be candidates for the lower house of the parliament need to be 18 years old in the Maldives and Sri Lanka, whereas 25 is the minimum age in Afghanistan, Bangladesh, Bhutan, India, Nepal, and Pakistan. The UN Security Council in 2015 adopted Resolution 2250 on Youth, Peace, and Security, which recognized the decisive role young people play in the maintenance and advancement of peace and security in the world.

²¹⁹ UNCRRC Nepal, *Concluding Observations of the CRC Committee*, 8 July 2016, CRC/C/NPL/CO/3-5, paras. 39-40.

²²⁰ South Asia's Adolescent Data – India: 250 million with 19% of the total population; Pakistan: 38.8 million with 21% of the total population; Bangladesh: 32.5 million with 20% of the total population; Afghanistan: 8.3 million with 26% of the total population; Nepal: 6.6 million with 23% of the total population; Sri Lanka: 3.3 million with 16% of the total population; Bhutan: 144 thousand with 19% of the total population; Maldives: 64 thousand with 17% of the total population.

²²¹ Elena Camilletti, 'Realizing an Enabling Environment for Adolescent Well-Being: An inventory of laws and policies for adolescents in South Asia', *UNICEF Office of Research*, 2018, p. 16.

²²² 'Ensuring Child Rights in the New Constitution of Nepal', *World Vision*, 2011, available at <https://www.wvi.org/nepal/article/ensuring-child-rights-new-constitution-nepal>, accessed on 10 April 2020.

²²³ For more specific rights of the young by the CRC, see Article 13 assures young people's right to the freedom of expression; Article 15 enshrines the right to Freedom of Association and Peaceful Assembly. This implies the ability of young people to gather and organize in order to represent their views systematically; Article 17 articulates the Right to Information, a prerequisite for meaningful participation in decision-making domains.

Suggestions: It is important to understand and develop appropriate policies, frameworks, legislations, and institutions for meaningful and equal participation of youth in the decision-making of countries in South Asia. Children should be directly made part of the policymaking process, and it should be especially done in areas such as disabilities, labor-related issues, violence, discrimination, etc. Institutional space should be provided with a dedicated platform for the young to express and provide views on issues that most impact them. The gap between the policymakers and the young should be reduced, encouraging engagement. Existing youth organizations should be supported in all ways providing necessary training and information.

6. Children Deprived of Liberty in South Asia

Factual Situation: Despite the unavailability of specific data in South Asia, the estimates suggest that at least 7.8 million children are deprived of liberty worldwide.²²⁴ Children deprived of liberty usually suffer from violation of human rights as well as heightened risk of violence, sexual assault, and rape, etc. Along with damaging the physical and psychological health of a child, it also hinders them from opportunities to contribute to society²²⁵. In South Asia, several children are living and working on the streets. Some reports suggest that the arrest and detention of such children by police officers are usually followed on grounds such as vagrancy, indecent behavior, prostitution, being a public nuisance, or exposure to moral danger.²²⁶ These arrests occur in Bangladesh, Nepal, Pakistan, and Sri Lanka.²²⁷ Instead of prevention, States often rely on repressive and punitive policies that lead to excessive criminalization. “In breach of the principle that the deprivation of liberty is used only as a measure of last resort and for the shortest appropriate time, deprivation of liberty remains a common form of punishment for juvenile offenders, who are often detained for several years and, in some cases, for indeterminate periods.”²²⁸ However, children are frequently placed in inhumane conditions and adult facilities in different situations. Deprivation of liberty put these children at a heightened risk of violence, rape, and sexual assault, as well as torture, cruel, inhumane, or degrading treatment or punishment leading to degradation or stop in the physical and psychological development of the children. It also hinders their capacities and opportunities to conduct healthy lives and constructively contribute to society.²²⁹ Children might have a

²²⁴ Manfred Nowak, *UN Global Study on children Deprived of Liberty*, 11 July 2019, UNGA A/74/50.

²²⁵ ‘Children Deprived of Liberty: Learning from the UN Global Study’, *Global Campus of Human Rights*, available at <https://gchumanrights.org/education/e-learning/moocs/children-deprived-of-liberty-learning-from-the-un-global-study/about.html>, accessed on 27 November 2020.

²²⁶ ‘Guidance Note of the Secretary-General: UN Approach to Justice for Children’, *United Nations*, 2008 available at <https://www.unicef.org/rosa/media/4591/file>, accessed on 8 April 2020.

²²⁷ Justice for Children, *UNICEF*, available at <https://www.unicef.org/rosa/what-we-do/child-protection/justice-children>, accessed on 2 April 2020.

²²⁸ ‘UN Approach to Justice for Children’, *Guidance Note of the Secretary-General*, 2008, available at <https://www.unicef.org/rosa/media/4591/file>, accessed on 8 April 2020.

²²⁹ Nowak (n 223).

deleterious effect by setting the minimum age of criminal responsibility too low. Except for Afghanistan and Bhutan, the minimum age of criminal responsibility in South Asian countries is below international standards, ranging from 7 (India), 9 (Bangladesh), 10 (Maldives, Nepal, Pakistan), to 12 (Afghanistan, Bhutan, Sri Lanka). In India and Sri Lanka, children below 18 in heinous offenses can be tried as adults.

Legal Situation: The Maldives is the only country in South Asia without specific legislation on how the justice system should deal with juveniles.²³⁰ Although laws exist, their implementation is still an issue in most of South Asia. The Right to legal assistance is not available in all countries.²³¹ Children are to be produced before courts within 24 hours of their arrest in all countries. Children in Bhutan, Sri Lanka, and the Maldives end up being in detention pre-sentence indefinitely as the juvenile justice laws do not stipulate a timeframe for completing children's cases as in Afghanistan, Bangladesh, India, Nepal, and Pakistan.²³² Access to justice delivery mechanisms such as juvenile courts is not adequate in most countries, and informal court mechanisms operate despite being not allowed under the law affecting girl children the most in countries like Pakistan and Afghanistan.

Suggestions: South Asian countries need to conform to international standards in case of minimum age for criminal liability. The use of force, violence, and torture on children should be banned, and existing laws should be strengthened to ensure monitoring and avoidance of such cases. The data management system in all countries must be systematized, and proper information should be made available for developing legislation and policy frameworks. Cases in courts with minors should be tried separately, and timeframes should be developed in Bhutan, Sri Lanka, and the Maldives for the conclusion of cases. Human resources and protection officers dealing in cases with children should be adequately trained and sensitized with methods and means of dealing with such offenders. Institutional and policy frameworks should be strengthened with proper resources for the implementation of laws.

VI Analysis and Conclusion

It can be argued that child rights in South Asia have traveled a long path as the shift can

²³⁰ Afghanistan: Juvenile Code, 2005 & Law on Protection of Child Rights, 2019; Bangladesh: Children Act, 2013; Bhutan: Child Care and Protection Act, 2011; India: Juvenile Justice (Care and Protection of Children) Act, 2015; Maldives: Regulations on Investigation, Adjudication and Sentencing in respect of Offences committed by Minors; Nepal: Act Relating to Children, 2018; Pakistan: Juvenile Justice System Act, 2018; Sri Lanka: Children and Young Persons Ordinance.

²³¹ Children are not provided with qualified, independent, free, or subsidized legal aid (Afghanistan, 2011, para 74; India, 2014, para 87; Sri Lanka, 2018, para 45) and statements may be forcibly extracted from them (Afghanistan, 2011, para 74).

²³² 'The Legal Framework for Child Protection in South Asia', UNICEF, 2020, available at https://www.unicef.org/rosa/media/5906/file/The_legal_framework_for_child_protection_in_south_asia.pdf accessed on 10 April 2020.

be seen from the state where children were considered as tools for empire building to considering them as right holders. However, the overall observation of the status of Child rights in South Asia reflects some of the common and pertinent issues that are yet to be addressed. One of the major issues is the gap between de jure recognition of child rights and de facto recognition. As soon as law in books ends, the scenario of law in practice differs vaguely. Hence it must be addressed.

Another issue to be addressed is the definition of the child itself. The age group ranges from a child being defined as somebody under the age of 12 years to 20 years and the definition of it varies sectorally. For example: In Nepal: Anyone below the age of 18 years is a child but for marriage, it is 20. Which means it lacks uniformity. And it is seen as one of the major problems in the sector of child rights. Most of the laws that are promulgated are protective in Nature, but they lack a corrective approach as an element. This reflects that South Asia still lacks a reformative environment for children. The idea of accessibility and affordability of child rights is still taking baby steps in the region. There is a huge spectrum yet to be covered. This Region still is intertwined in the debate of who defines the best interest of a child. Also, the never-ending debate over children's privacy and parent's right over children is holding the region back. Also, the database of the region seems to be very weak, and not much effort is made to improve it. Hence, in order to know the real status of the child in the region, a proper database must be prepared and investment is to be made accordingly. Besides, the paper finds that CRC's contribution over the last 30 years towards the development of international, national, and regional standards for the protection, promotion, and well-being of children's rights is unparalleled in the world, especially in South Asia. The impact of this can be seen as positive indicators throughout the world.²³³ The South Asian countries are party to most of the international legal instruments that have set out a level of standard for the protection of children's rights. The South Asian regional body, SAARC also aims for the promotion and protection of the South Asian population. This body also encompasses the protection of children's rights as well. South Asian countries under SAARC have adopted specific conventions and legal instruments for the holistic welfare of the children.

A glimpse into the country-centric approach with regard to the standards protecting child rights in the South Asian region demonstrates compliance with international legal instruments. The amalgamation of international standards with probative legal and judicial rules speaks to the willingness of the South Asian countries to protect and respect children's rights. The paper finds that the overall situation towards the realization of the rights of the children has improved manifold with the reduction in child marriage, and gender gap; increased access to education and participation of the children in policy decisions, and limiting the age of the employment are examples of the seriousness that the South Asian countries have shown. The continuous effort of

²³³ See for details, *Kilkelly*, (n 20) pp.143-152, and also 'Study of legal implementation of the UN Convention on the Rights of the Child in 12 countries' conducted on behalf of UNICEF UK by Laura Lundy, Bronagh Byrneand, Jason Kang of the Centre for Children's Rights at Queen's University Belfast and Ursula Kilkelly of Faculty of Law, University College Cork, available at www.unicef.org.

the state and also the recent meet up of the religious leaders of the region in Bhutan²³⁴ and their commitment to the protection of Child rights reflects future betterment of child rights.

Despite the efforts made by South Asian countries, there remains a noticeable gap in meeting the necessary standards for the protection of children's rights. South Asian countries have many commonalities. The diversity and uniqueness of each South Asian state are what makes the region unique on its own. However, the region still has a lot to offer to the children in its region. The continuous efforts are plausible, but bridging the gap between international standards and domestic efforts is requisite.

One approach moving forward would be by bridging the gap would be to strengthen the regional mechanism. A comprehensive regional mechanism would not just be a holistic representation of the world while putting the global South's perspective. Still, most notably, it would also serve as a forum to discuss the necessary and important matters of standards and methods to address the gap in the standards for the protection of the rights of children. A regional mechanism like SAARC would be invaluable in addressing the legal mechanisms, and the socio-economic and political situations with regards to child rights. It would also help bridge the already existing international, regional, and legal standards in South Asian countries and indefinitely help promote, protect, and fulfill the rights of the future: the rights of the children.

²³⁴ 'Religious Leaders in South Asia Commit to Work with UNICEF to Protect and Promote Children's Rights', *UNICEF*, 29 January 2020, available at <https://www.unicef.org/rosa/press-releases/religious-leaders-south-asia-commit-work-unicef-protect-and-promote-childrens-rights>, accessed on 28 November 2020.