

Infringement of Child Rights: Cross Country Experiences in South Asia with Special Reference to Sri Lanka

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Abstract

Out of unregistered global child births in 2007, nearly half is reported from South Asia. Out of all young women in the world who got married before the age of 18 years, half live in South Asia. Thirteen percent of all children in South Asia are engaged in labour. Trafficking, sexual exploitation and abuse are other major child problems in the region. Child problems are interrelated. This study examines (a) the interrelation of selected child problems, (b) addresses the infringement of selected child rights and legal measures enforced to prohibit child problems in South Asia. The study is based on secondary data regarding South Asian and other developing economies.

The study reveals that unregistered births aggravate the problems of child marriage and child labour. Poverty is another reason for the prevalence of early marriages and child labour. In comparison with other countries, the infringement of child rights in Sri Lanka is the lowest in the case of unregistered child births, child marriage and child labour. Sri Lanka has sometimes special laws regarding child rights. The study finds that with

regard to some issues, certain countries have no laws. Marital rape in Bangladesh and registration of births in Bhutan can be stated as examples. Some countries have such laws, but other issues such as cultural and traditional opinions and religious views do not allow general laws to be enforced. Sometimes law is not sufficient to provide or ensure adequate security. Punishment in families and in schools in India and punishment in schools in Maldives can be stated as examples. All in all, it is healthy for South Asian countries to form a forum to get together and review their individual experiences and problems on child issues.

Key words: child rights; child labour; early marriage; registration of births; role of the state

1. Introduction

Studies show that infringement of child rights happens in all parts of the globe. It is noteworthy the interest of almost all governments to address this issue. The Convention on the Rights of the Child (CRC) has been ratified by 192 countries including South Asia. Eventhough the problem is multifaceted, it has been addressed

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in a number of studies conducted in both developed and developing countries. As shown by Pinheiro (2006) no violence against children is justifiable, and all violence against children is preventable. ILO (2010) says that child labour continues to decline, but only modestly. During the period of 2004-8 it reduced by three percent but the reduction rate during the period 2000-2004 was 10 percent. The same report shows that there had been an alarming 20 percent increase in child labour in the 15-17 years age group – from 52 million to 62 million. When we take South-Asian case, out of 51 million unregistered global child births in 2007, nearly half is reported from South Asia. Globally, more than 64 million young women who got married before the age of 18 years; half of them live in South Asia. Thirteen percent of all children (around 44 million) in South Asia are engaged in labour. Trafficking, sexual exploitation and abuse are other major child problems in the region (UNICEF 2009).

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Thus, infringement of child rights is still alive. The reasons may be, the remedial measures are too insufficient to protect and empower children. Legal framework established by the State, the critical prohibit or of violence, may be inadequate or laws are just lying in the book without proper enforcement. Moreover, child problems are interrelated. On this background, this study makes an attempt, (a) to examine and estimate the interrelation of selected child problems by selecting countries with available data and (b) to address infringement of selected child rights and legal measures enforced to prohibit child problems in South Asia (except Afghanistan where several

civil struggles are going on). It enables to understand dependence of a selected child problem on the other and the contributions made by each State to overcome child problems. The study is based on secondary data and general linear regression models are estimated in the analysis of data.

2. Status in South Asian Countries

South Asian countries are highly unequal in terms of population numbers. At present, South Asian people have many socio-economic and political problems, namely poverty, illiteracy, unemployment, inequality of income distribution,

violence against women, pollution, and exploitation of child labour and other child problems. Some of development indicators of these countries are given in Table 1. Eventhough few countries like Sri Lanka and Maldives are somewhat advanced in some areas such as literacy, human development, and elimination of poverty (however, note the high income inequality in these two countries), poverty and illiteracy are very high in the region. Out of total population, about one-third is children (Table 2), the Low level of education is a central cause of many economic ills and it is a reason behind high birth rates and

Table 1
Selected Basic Development Indicators of South Asian Countries

Country	GNI per capita income 2013 (constant 2011 PPP \$) ¹	Adult literacy rate (% ages 15 and older) 2005-12 ¹	Human development index (2013)	Income Gini coefficient (%), 2003-12 ¹	Poor % less than \$ 1.25 a day 2002-12 ¹	Working children between 5-14 years (%), 1999-2007 ²
India	5,150	62.8	0.586	33.9	32.7	12.0
Pakistan	4,652	54.9	0.537	30.0	21.0	8.2
Bangladesh	2,713	53.7	0.558	32.1	43.3	13.0
Bhutan	6,775	52.8	0.584	38.1	1.7	19.0
Nepal	2,194	57.4	0.540	32.8	24.8	31.0
Sri Lanka	9,250	91.2	0.750	36.4 ^b	7.0 ^a	8.0
Maldives	10,074	98.4	0.698	37.4	1.5	N.A
South Asia	5,195	62.9	0.588	-	32.9 ^a	13.0
World	13,723	81.2	0.702	-	-	-

Note: a - Related to 2002-11 period;

b - According to Department of Census and Statistics of Sri Lanka, values of Giniindex are 47 percent in 2005, 48 percent in 2012/13 and 49 percent in 2009/10(<http://www.statistics.gov.lk/HIES/>).

Sources: ¹ - UNDP (2014); ^a - UNDP (2013); ² - UNICEF (2009)

Table 2
Selected Population Indicators of South Asian Countries

Country	Bangladesh	India	Nepal	Pakistan	Sri Lanka	Maldives	Bhutan
Total population (million) (2013) ¹	156.6	1252.1	27.8	182.1	21.3	0.3	0.8
Population under age 14(% of total),2010-14 ^b	30	29	35	34	25	29	28
Gross secondary Enrolment ratio 2003-2012 (%)	51.0	69.0	66.0	37.0	99.0	72.0	74.0

Note: a- in 2005

b- <http://data.worldbank.org/indicator/SP.POP.0014.TO.ZS>

Sources: UNDP (2011); ¹ UNDP (2014)

poverty. Violation of child rights has to be analyzed in such a framework.

3. Human rights, Child Rights and Child Problems

Out of several Human rights instruments, there are five principal human rights instruments (UNDP 2000). Of them, The International Bill of Rights consisting of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR),. others include, The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and Convention on the Rights of the Child (CRC). Thus, the instrument on child rights is a principal one.

There are many kinds of living things in the world. Animals, reptiles, birds, insects, fish are some of them. When we take a non-human being, it has specific characteristics in comparison with humans. After birth non-human beings take a shorter period of time than human beings to live independently. They can walk, fly, or prowl and live independently without the assistance of others. But humans cannot do so. A child, even if five years old still cannot live independently. She/He cannot prepare meals, wear cloths, so forth. That is one reason to protect child rights.

By 2009, there were 2,219 million, children under 18 years of age in the globe. Out of them 621million lived in South Asian countries (including Afghanistan) representing 28 percent (UNICEF 2011). Children in the world, at present, face a lot of problems. Many of their births are not registered. They suffer both physical and psychological harassments, and experience violence, exploitation and abuse. They are used to fight wars

or sell their labour, are sexually abused or subjected to violence as a punishment. They are forced to entangle in marriage knot or trafficked to exploitative conditions of work and they are imprisoned or detained needlessly. In such circumstances, human rights of children are infringed (UNICEF 2009).

3.1 *Infringement child rights in South Asia: unregistered child births, child marriage and child labour*

Registration of Births

Non-registration of births, employing for work, and early marriage are infringements of child rights (The United Nations Convention on the Rights of the Child 1990, Sections 7.1 and 32.1, and Convention on the Elimination of All Forms of Discrimination Against Women, Article 16.2). Birth registration should be free and provides evidence for age of a child. For a child, it is helpful and necessary to enroll in a school,

obtain identity cards and passports, register in polling registry, get married, prove nationality, claim for parental property (another human right), open bank accounts, be vaccinated properly etc. Thus, registration of the birth is a requirement for a child for his or her existence and to exercise his or her rights as a citizen. However, in 2007, births of around 51 million children were not registered, almost half of them in South Asia. According to available data, one in four developing countries has a birth registration rate less than 50 percent. Registration rate of births in the poorest households is one half of that of the richest households (UNICEF 2009). In South Asian region, the highest proportion of child birth registration is reported from Sri Lanka and the lowest is from Bangladesh (Table 3) which is the lowest in the

world (UNICEF 2009). In Pakistan and Nepal also birth registrations are significantly low.

Early Marriage

Child marriage has negative effects on families and communities. It impacts adversely on health and education sectors of a country. Under these marriages, girls often have little knowledge about the responsibilities of being a wife and are not familiar with sex and childbirth.¹ Early marriage leads to a number of poor social and physical outcomes for young women and their offspring.² Their level of education and social status become lower, they have less reproductive control, and suffer higher rates of maternal mortality and domestic violence. When the girls married at a very young age, they

have a large number of child bearing years, risking high infant death rates, malnutrition, cervical cancer, sterility, and maternal death (Aghi, undated).

More than 64 million (30 percent) young women aged 20–24 years in developing countries have reported that they were married or in union by age 18. The highest proportion, 46 percent (about half of total marriages), is reported from South Asia and sub-Saharan Africa is ranked second (39 per cent). The major reason behind early marriage is poverty (UNICEF 2009). The highest rate of early marriages is reported from Bangladesh and the lowest is from Maldives (Table 3). According to the descending order of the rate of child marriage, Bangladesh represents the fourth place in the world (UNICEF 2009).

Table 3

Child Protection Indicators (%)

Country	Total birth registration 2011	Child marriage 2005–2013		Child labour (5–14 years old)
		(married by 15)	(married by 18)	
Bangladesh	31	29 (2011)	65 (2011)	13 (2006)
Bhutan	100 (2010)	6 (2010)	26 (2010)	3 (2010)
India	84	18 (2005-6)	47 (2005-6)	12 (2005-6)
Maldives	93 (2009)	0 (2009)	4 (2009)	n.a
Nepal	42	10 (2011)	41 (2011)	34 (2008)
Pakistan	34 (2012-13)	3 (2012-13)	21 (2012-13)	n.a
Sri Lanka	97 (2006-7)	2 (2006-7)	12 (2006-7)	8 (1999-2007)
South Asia	71	17	45	12

Source: UNICEF Global database, available at http://www.childino.org/labour_countrydata.

Child Labour

Infringement on child rights does not allow children to be perfect adults. Child labour deprives children of education and improvement of their skills and hence, it retards human capital accumulation, which is a major impediment to economic progress (Basu and Tzannatos 2003:145). Child labour may be harmful in affecting the present and future health of the child (Rosati and Rossi 2003: 283). The major reason of child labour has been identified as poverty (UNICEF 2009).

Based on 102 countries, as estimated by UNICEF, 150 million children between 5–14 years of age worldwide are engaged in child labour. In sub-Saharan Africa child labour is most common and more than a third of child work. Studies reveal that there is a reduction in children's engagement in economic activity in most countries, including large ones such as Brazil, India and Mexico. However, in some other countries the trend is stable or increasing (UNICEF 2009). In South Asian region child labour is reported to be proportionately highest in Nepal and lowest in Sri Lanka (Table 3). Based on one officially available statistics, it is estimated that there are 22 million children, aged between 5 and 14 years, working in South Asia out of a total of 337 million children in this age group (Table 4).

3.2 Analysis of Interrelation among Variables

When a child's birth has not been registered, the child himself and sometimes his parents do not know his date of birth. Consequently, he

cannot provide evidence for his age. He needs his registration of birth to enjoy other rights such as enrolment in a school, getting married etc. If a child does not go to school, he may tend to become a labourer and get married before his maturity as an adult. Thus, infringement of a child's right to get registered his birth is interrelated with infringement of other rights such as child labour and child marriage.

of 65 countries where the said child problems are prevalent. Estimated parameters are highly significant (95 percent and above) with expected signs (Table 4). The results reveal that registration of births mitigates the seriousness of the problems of child marriage and child labour that are outcomes of poverty too.

Table 4
Regression Results

Independent variable	Dependent Variable	
	Child labour	Child marriage
Constant	22.8 (3.8)	54.1 (9.0)
Poverty	0.27 (3.7)	0.15 (2.0)
Registration of births	-0.14 (-2.2)	-0.43 (-6.9)
R-squared	0.42	0.63
D.W stat	2.1	2.0
Sample size	65 (countries)	63 (countries)

Note: *t* - statistic within parenthesis

Source: Basic data - UNICEF (2009); UNICEF (2011); UNICEF Global Database

As stated explained earlier, child labour and child marriages are considered to be outcomes of poverty. In South Asia, one third of the population lives on less than one dollar a day. Poverty is absolutely very high in almost all South Asian countries other than Maldives, Bhutan and Sri Lanka (Table 1). To examine quantitatively respective influences of both poverty and unregistered births (or registered births) on child labour and child marriages, using OLS method, general linear models were estimated in light of secondary data

4. Human Rights, Legal Environment and Child Problems

Protection of human rights enriches some factors of production, namely labour and capital, enhances competition among economic units, provides a conducive environment for the market, and gives directions to essential pillars of the legal mansion in a country. It also provides directions to enhance efficiency of the government. Human rights act sometimes as a corrective measure of a market failure (Herath 2008).

Therefore, child rights is no exception. However, protection of human rights is somewhat poor in many developing countries. Some indices have been developed to measure the degree of protection of human rights in countries. In the case of South Asian countries, human rights are not satisfactorily protected. All countries are below the world average measured by the human rights index (Table 6).

Human rights are often protected through law. Therefore, suitable and adequate laws need to be enforced for both social and economic upliftment in a society or an economy. Efficiency of law is also measured by these indices. South Asian countries have not achieved satisfactory levels of efficient rule of law (Table 6). Values of the said index of all countries stand lower than the world average.

There are both international and domestic laws to ensure child rights as well as to protect children from violence. In addition to conventions passed by international organizations such as UN and ILO, South Asian countries have a separate organization by the name SAARC. Even if countries agree with international conventions, in these countries, sometimes these conventions are not enforced as domestic laws. Therefore, consideration of domestic laws is more important than international laws. Thus, domestic legal provisions in South Asian countries are reviewed here to examine legal protection provided for children against violence. In addition to registration of births, early marriage and child labour, there are other prevalent child problems in South Asia namely sexual harassment, rape, physical or psychological

harassments, and using for pornography. Legal provisions taken by each country is given in Table 7.

Table 7 provides a summary of legal measures enforced by each country to combat violence against children. When legal provisions are examined, it is clear that all the governments in South Asian region have made commitments to end violence against children by enforcing domestic laws. Only a gap can be observed in legal provisions regarding registration births in some countries. Many countries have amended their penal codes with a view to combat violence against children. However, some gaps and deficiencies in law in some countries can also be observed.

Some countries have no adequate laws to prevent violence against children in educational institutions. In the region, only Sri Lanka has laws banning corporal punishment in schools. In Pakistan, corporal punishment prevails in more than 40 percent of government schools and some 35 percent of private schools. Children receive the same kind of treatment in religious institutions such as *madrassas* in Bangladesh and Pakistan, and monasteries in Bhutan, and at the hands of private tutors. Sexual abuse is also reported from university or college campuses. In India, 13.5 per cent of female students experienced rape, molestation and verbal harassment from male students and 4.8 percent from university staff (UN,2005). Bangladesh has no laws regarding marital rape and violence in schools (Regional Consultation on Violence against Children in South Asia, 2005).

Table 6

South Asia: Values of Rule of Law and Human Rights Indicators (ranking in descending order) - 2011

Country	Rule of law indicator	Human rights indicator
India	0.442	0.493
Pakistan	0.365	0.340
Bangladesh	0.359	0.482
Nepal	0.438	0.530
Maldives	0.452	0.468
Sri Lanka	0.443	0.444
Bhutan	0.528	0.557
Average	0.530	0.571

Source: World Governance Index 2011, Version Two. Report 2011, Available at, http://www.world-governance.org/IMG/pdf_WGI_short_version_EN_web-4.pdf

Table 7

Basic Information on Domestic Laws Regarding Violence Against Children in South Asia

Country	Registration of births	Child marriage	Child labour	Sexual harassments or rape	Trafficking	Pornography/ Physical or psychological harassments
Bangladesh	2004	Child Marriage Restraint Act 1929, says that minimum age is 18 yrs but religious laws early marriage	1938, 1961	1974, 1976, 1993	2000	Penal code 1860, Child Act 1974
Bhutan		1980, 1996	1994	1996 (Rape)		1997 (in Schools)
India		1929	1986	1860 (Penal Code)	1956	1995, 1956, 2000
Maldives		1991, 2000	1991	1991	No cases reported	1991
Nepal	1976	Amendment to Civil Code, 1999	1999	Civil Code	1986	1992
Pakistan		1992	1991, 1992, 2000	No for boys	2002	1860 (Pornography), 1983
Sri Lanka		1956, 1995 (Amendment to Marriage Registration Act)	1995 (Amendment to penal code)		1995 (Amendment to penal code)	1939, 1998 (Amendment to penal code)

Source: Based on Regional Consultation on Violence against Children in South Asia, 2005

In the penal codes of India, Bangladesh and Pakistan, rape laws do not protect boys (UN, 2005). In Bhutan, there are no laws for trafficking and no prohibition of punishment in families. Although the early marriage is not legally recognized until marriage certificate was issued, as written in the Marriage Act, both boys and girls engage in common-law marriage as early as 15 years of age, in Bhutan. Sometimes parents promote punishment at schools for making children well-mannered. At

workplaces physical punishment by employers and parents is more widespread in informal sectors and considered to be necessary for correcting behaviour. Also, there are no laws regarding registration of births, in Bhutan. In India, there is an absence of adequate provision prohibiting punishment in the families, communities and workplaces other than the severe forms of physical violence. For the punishment at schools, several States such as Tamil Nadu and Andhra

Pradesh have amended the Education Rules to prohibit punishment (Regional Consultation on Violence against Children in South Asia, 2005).

Maldives has no strong laws to prevent punishment at schools. In Physical and Psychological Punishment Law on the Protection of the Rights of the Child 1991 (Chapter I-10), it states that as duties of the government, punishment given in schools must be appropriate to the age of child and should not be

physically or psychologically harmful to the child. Pakistan's Marriage Ordinance defines that a girl will be an adult either when she attains the age of 16 or puberty whichever is earlier, while a boy is deemed to be an adult at the age of 18. Thus, a girl as young as 11 or 12 years old, could be regarded as an adult (Regional Consultation on Violence against Children in South Asia, 2005).

In some occasions, there is an extended legal framework to combat violence against children, but practices such as early marriage, trafficking, child labour, sexual abuse and corporal punishment still exist. Pakistan is an example. Law is not sufficient to prevent some disservices against children. In India female feticide is prohibited, but between 3 and 5 million female fetuses are aborted every year. In Bangladesh, even though a demand for dowry is prohibited, women who are killed by their husbands account for 50 percent of all murders, often linked to disputes over the dowry paid to the husband. Female students in Sri Lankan universities similarly reported 'ragging' that took a sexual form. Children working in carpet and garment factories in Pakistan face sexual violence. In the Maldives, a study in 2004 found that child sexual abuse is a major problem facing children and young people in a number of settings, including the workplace. (UN, 2005)

Law enforcement officers in South Asian countries regularly use violence as a standard policing practice. In India, Pakistan and Bangladesh there

are reports that police use violence against children to obtain evidence and confessions. The absence of reliable birth registration systems also allows the police to justify detaining children by claiming that they are older than the statutory minimum age. Sri Lanka's situation is somewhat satisfactory in comparison with other countries in the region. It has established The National Child Protection Authority in 1998 as an umbrella organization to unify and coordinate the work of ten line ministries in relation to child protection. Its principal task is the formulation of policy for prevention and protection and to guide and support other service providers.

4. Conclusion

Regression results of the study reveal that unregistered births aggravate the problems of child marriage and child labour. Poverty is another reason for the prevalence of early marriages and child labour. By reducing poverty (or increasing the family income) child labour and early marriages can be reduced. Also, by eliminating impediments and making arrangements to increase registration of births, child marriages and child labour can be reduced. By doing so, child rights can be protected and children can be empowered to a certain extent. In comparison with other countries, the proportion of infringement of child rights in Sri Lanka is the lowest in the case of unregistered child births, child marriage and child labour. Sri Lanka has sometimes special laws regarding children.

In the case of domestic laws, at the very beginning the study showed that the rule of law and protection of human rights are poor in South Asian countries. Similarly, domestic laws by which child rights are protected, the study finds that with regard to some issues, certain countries have no laws. Marital rape in Bangladesh and registration of births in Bhutan can be stated as examples. Some countries have such laws, but other issues such as cultural and traditional opinions and religious views do not allow general laws to be enforced. Examples include the acceptance of punishment in schools by parents in Bhutan as necessary and the acceptance of the attainment of puberty by Muslim people as adulthood. Sometimes law is not sufficient to provide or ensure adequate security. Punishment in families and in schools in India and punishment in schools in Maldives can be stated as examples. All in all, it is healthy for South Asian countries to form a forum to get together and review their individual experiences and problems on child issues.

There have been laws against some violence against children since 1920s and 1980s. But no significant reduction in violence can be observed. Example include, law against sexual violence in India, Bangladesh and child marriage in India, physical and psychological harassment in Pakistan. Therefore, sometimes only the law is not enough. Some other times laws restricted only to a document without practical enforcement. In some instances, culture appears

overwhelming the law. Studies are need to be undertaken to understand these problems properly to find solutions.

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Footnotes

¹ Early Marriage: "Whose Right to choose" Mission Statement of the Forum on marriage and the Rights of Women and Girls, May 2000.

² Consequences of Early Marriage for Women in Bangladesh, Erica Field Harvard University, September 2004.