

CHILD PROTECTION SYSTEM REFORM IN THE REGIONAL CONSULTATION OF THE SOUTH ASIAN NATIONS (SARC)

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Children are vulnerable on a number of fronts; such as home and family, schools and educational settings, care and justice system, and child labour in work settings. Due to this, child protection is a recent entry into the South Asian nations (i.e., Pakistan, Bangladesh, Nepal, Sri Lanka, Maldives, Afghanistan, and Bhutan) agenda. This paper reviews the South Asian countrywide initiatives in relation to a development of child protection systems and those that enhancing regional cooperation and cross-border collaboration between the above countries. So far, review of the initiatives suggests that there be a need to reinforce multi-stakeholder partnerships at national and regional levels to develop best practices in child protection system in these nations.

Keywords: Vulnerable children, child protection, South Asian Nations

INTRODUCTION

The Regional Consultation of the South Asian nations (SAARC) was established in 1985 and currently has the following eight members: Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka. In one of its forum, a girl delegate from Pakistan, Ms. Neha Zia presented the outcome of the Children's Consultation. Ms. Neha explained that children in the South Asian countries confronted with high prevalence of violence against them. Sexual abuse, physical abuse and psychological abuse are among the serious and threatening forms of violence according to the seventeen child representatives (9 girls and 8 boys) from the South Asian member states who attended the Regional Consultation as part of the country delegations. Children asked the governments and participants to

follow and implement the 12 recommendations of the UN Study on Violence against Children and committed upon their return to their respective countries to ending violence against children (SAIEVAC, 2012). These violations have long-term physical and emotional consequences on children and young people (SAIEVAC, 2012).

Despite the ongoing progress in the economic sphere, South Asia is still one of the most disadvantaged regions of the world. It is home to one-fifth of the world's population, including millions living below the poverty line. Economic marginalisation is not the only problem because the area is home to conflicts in many forms, such as ethnic, bilateral, terrorism, etc. The prevalence of violence, especially through proliferation of small arms, within the region has produced a culture of violence and children have become the victims of such violence on a regular basis, either directly or indirectly. The South Asia region leaves children especially vulnerable to violence.

'Children's vulnerability to violence is increased when they lack the protection of a parent or caregiver or live in countries torn by disasters and conflict, which are all common scenarios throughout the region. South Asian children are marginalized because of poverty, caste, ethnicity, religious belief or disability which prevents children from accessing necessary child protection and social welfare services. Children in the region face numerous harmful traditional practices, such as early marriage'

(Bajracharya, 2012, p. iii)

Children in South Asia are frequently expected to tolerate violence and be submissive to their elders. Their relationships with adults are often characterized by compliance and obedience, rather than mutual affection and trust (Heiberg, 2005). Different forms of violence are often interrelated, as a child experiencing one form of abuse may also experience other forms of abuse in different settings. Physical and psychological violence and punishment have been found to be the prime reason for children leaving home, quitting school or ending up in sex trades, jails, or on the street (Heiberg, 2005). There are 25 million of child labourers in South Asia and millions of children are trafficked throughout the region every year. The vicious

cycle of violence is perpetuated by a lack of protection measures, poor identification and understanding of violence, denial of the degree of the problem, and a failure to prosecute perpetrators and a reluctance to end harmful practices (Jareg, 2008). Girls, in particular, are discriminated even before birth, and such discrimination continues throughout their lives.

According to UNICEF (2005, p. 17), “...a discussion on child protection and child abuse in this context ... poses many challenges”. It is, in fact, the general challenge of different preferences in policymaking circles, because each of the South Asian state has its own priorities with reference to social welfare and child protection.

Nonetheless, the economic development in South Asia continues to have positive impacts. The visible results of economic progress can be seen in the form of increasing numbers of children being born healthy, reduction in infant mortality, and improving access to education (UNICEF, 2005). Over the past decade or so, the social welfare systems have been improving in the region. However, as many studies have reported, violence against children is rampant in South Asia and there appears to be commonalities and differences in violence against children among the South Asia states.

DEFINITION

Child protection as a holistic concept is still a recent phenomenon in SARC nations and is still in the primary stages of development (SAIEVAC, 2012). Often, child protection models in developed countries are seen as good practices and having established an institutional framework including qualified and trained social workers. Despite this, children in developed countries, though in fewer numbers, continue to experience violence. The challenges for child protection in the South Asia region are compounded by factors such as poverty, discrimination based on gender, caste, class and religion, the sheer number of children, limited resources and untrained staff.

Nevertheless, governments in the region are taking serious steps to address these problems and improve child protection.

For the purposes of this paper, child protection is referred to as measures and structures to prevent and respond to abuse, neglect, exploitation and violence which affect children in all settings. UNICEF (2006) stresses that child protection also involves building a protective environment for children with eight essential components; which are:

- 1) Change in attitudes, traditions, customs, behaviour and practices,
- 2) Governmental commitment and capacity to fulfil protection rights,
- 3) Open discussion and engagement on child protection issues,
- 4) Protective legislation and enforcement,
- 5) The capacity to protect among those around children,
- 6) Children's life skills, knowledge and participation,
- 7) Monitoring and reporting and oversight; and,
- 8) Services for prevention, recovery and reintegration.

In South Asia, child protection is an emerging concept and at present a comprehensive or general definition of child protection is not available, although many measures and recommendations to protect children in particular situations exist. In South Asia, the agenda on child protection is directed by local and international NGOs and inter-governmental organisation, especially UNICEF. Consequently, an understanding of violence against children in the region has changed. Violence against children in South Asia is seen in a comprehensive manner, for example, by looking at this phenomenon in five settings as per the UN Study on Violence against Children: violence in schools and education settings; care and justice institutions; the world-place; and the community. All the SAARC member states are signatories of the United Nations Convention on the Rights of the Child (CRC) and by doing so have agreed to protect children from "all forms of physical and mental violence (CRC article 19).

While agreements at regional and international level reflect the SAARC member states' respect for international accepted definition of violence against children, there are disparities among the member states at national levels. For example in Afghanistan, the legislation covers some forms of violence, and the law does not consider corporal and humiliating punishment as a form of violence against children. In Afghanistan, there is no law on sexual abuse of children, nor on pornography and internet-related sexual crimes (SAIEVAC, 2012). Other SAARC countries do not have this level of legal gaps, but do suffer from the critical gap in implementation, especially relating to the issue of child labour. On this, a Bangladeshi official accepted that, the government “has extremely limited capacity to supervise and monitor factories and there is little or no recorded case of application of sanctions against the employer of child worker” (SAIEVAC, 2012, p. 27).

REGIONAL COMMITMENTS

Since the early 1990s, issue of the welfare of children in South Asia have come up during the deliberations of the South Asian Association for Regional Cooperation (SAARC). This shows a level of seriousness at the regional-level projection of children. In addition, there are now local authorities in all the SAARC member states that exclusively deal with the problem of the welfare of children.

In 2002, the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia was signed by the SAARC members. They noted, “Many of [children] require assistance and protection to secure and fully enjoy their rights, and to develop to their full potential and lead a responsible life in family and society” (SAARC, 2002a, p. 1). As far as the issue of defining “rights of the child” is concerned, the SAARC convention followed the rights of children as states in the UN Convention on the Rights of the Children. Through this agreement, the SAARC members agreed to follow their commitments of the many international forums, such as the South Asian Child at the World Summit for Children, in relation to the welfare of the children. The stakeholders agreed to actions against child abuse

and neglect, exploitation, torture, trafficking and violence” (SAARC, 2002a, p. 3), however, violence against children was not defined in the convention. This could be the case because this convention is very general in nature. It was merely aimed at emphasising the significance of the welfare of children in South Asia. There have been some developments via SAARC against trafficking in women and children.

To-date human trafficking is perhaps the only issue that was taken on its agenda by the South Asian Association for Regional Cooperation due to a strong advocacy campaign led by civil society groups and NGOs in South Asia. This could be because, at the beginning of SAARC the idea was to keep the contentious or sensitive issues aside and let the process move on with a strong foundation of consensus in softer areas of cooperation – human security. Another reason for the lack of the participation of NGOs was and largely has been the over bureaucratic system of SAARC, which predominantly allows the governments to propose, permit and implement projects in different areas.

SAARC could not avoid engaging in cooperation, in sensitive issues, because terrorism was taken up by SAARC as an important agenda in 1987, even though terrorism often has been an issue triggering tensions between India and Pakistan – two biggest SAARC members. After deliberations at various levels, the SAARC Regional Convention on Suppression of Terrorism was signed at the Third SAARC Summit held in Kathmandu in 1987. This created a scope for cooperation at SAARC against transnational crimes, and some hope in the civil society and NGO circles that they can push for their agenda via SAARC.

By virtue of its nature, collective actions against human trafficking demand cooperation of agencies dealing with state securities, such as armed forces, law enforcement agencies, and intelligence agencies. This issue, therefore, has implications for bilateral relations too, especially in the case of India and Pakistan, having history of four wars and intelligence agencies launching missions against the other country. Considering the political situation of the region, it was a significant move that there was an agreement against terrorism.

There were strong efforts from the civil society to guide the SAARC in the issue of human trafficking. In the early 1990s, NGOs from India, Pakistan and Bangladesh lobbied for a declaration on the issue of human trafficking to be passed through the SAARC. More specifically in 1996, NGOs from India, Pakistan, Sri Lanka and Nepal, created a coalition against trafficking in women and children. The Unnayan Bikalper Nitinirdharoni Gobeshona (UBINIG) of Bangladesh organised a regional workshop of NGOs working in this area to define the course of action for lobbying at SAARC. But, processes at SAARC were sluggish to respond to the advocacy led by NGOs (Akhter, 1999). Consequently, the coalition of NGOs speeded up lobbying because they wanted this issue to be on the SAARC agenda for the scheduled Ninth Summit to be held in the Maldives in 1997.

Prior to the summit in the Maldives, the NGOs also produced a common position paper for the SAARC countries. Lobbying was greatly successful because members of NGOs from Bangladesh, India and Nepal met the heads of state in their respective countries and informed them of the severity of the problem of human trafficking in the region (Akhter, 1999). The effectiveness of the lobbying was manifested in the declaration of the Ninth SAARC Summit, which for the first time acknowledged the trafficking in women and children as a serious social problem (SAARC, 2008, p.114). In addition, at the summit a decision was made to do a feasibility study of cooperation on eliminating human trafficking via SAARC.

Because the SAARC process was still slow to finalise and sign the convention against human trafficking, NGOs moved ahead with more advocacy campaigns and lobbying. In this regard, notable is the example of the SAARC People's Forum, synchronising with the meeting of 1998 SAARC in Colombo (SAARC, 2008). At the forum, the main issue was to stop SAARC from limiting the scope of the prospective convention to only trafficking in women and children for prostitution, because a whole range of other issues, mainly labour, causes human trafficking. They were the RESISTENCE Network members from South Asia, the premier South Asian anti-trafficking network, who lobbied for a comprehensive

convention to deal with human trafficking in the region, but these efforts proved to be unfruitful because at the Tenth SAARC Summit (Colombo,

1998). Heads of states stressed on the finalisation of the draft text of the Regional Convention on Combating Trafficking in Women and Children for Prostitution. Also, the leaders approved the convention to be signed at the Eleventh SAARC Summit (SAARC, 2008, p. 141). Nonetheless, NGOs kept on lobbying the convention to be named at a SAARC Convention on Preventing and Combating Trafficking in Women and Children.

At the time when there were hopes of getting the convention drafted and ratified by the SAARC member states, the geopolitical environment of the region changed. The issue was then pushed to the back-burner, because terrorism occupied the centre stage after the 9/11 incident and the 2001 terrorist attack on the Indian Parliament. It was during this time that the Eleventh SAARC Summit was postponed until 2002 – a delay of three years. However, as soon as the SAARC process recovered to its routine affairs in 2002, the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution was signed at the Eleventh SAARC Summit (SAARC, 2002b) in accordance with the commitment of the heads of state at the Tenth SAARC Summit (SAARC, 2008). However, the convention entered into force only after it was ratified by all the member states in November 2005 (MADADGAAR, 2007).

The late ratification or hesitation in committing to multilateral agreements is not an exclusive phenomenon at SAARC. The responses of SAARC members towards the United Nations Convention against Transnational Organised Crime implemented in 2003 also show mixed level of commitments at global levels. Afghanistan, Bangladesh, India, Pakistan and Sri Lanka, are the SAARC members to have ratified the UN convention. Nepal has only signed it, and Bhutan and the Maldives have not even signed the convention. India was the only state that has ratified the following agreements: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (performed in 2003) and

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the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime (implemented in 2004). New Delhi ratified these two UN agreements in 2011. Since December 2000, Sri Lanka is only a signatory to the both protocols (UNODC, 2011). Indirectly, this shows that SAARC members feel the complexity of any multilateral cooperation against transnational crimes, either regional or global. Therefore, hesitate to commit to certain agreements forcing them to make reforms and actions at domestic levels. Nonetheless, the ratification of UN conventions would be complementary to the work of SAARC in this area.

It is important to underscore that, through the action, the SAARC became the first regional body to have produced a treaty against trafficking – three years ahead of the European convention on this issue. The Council of Europe produced a convention on Action against Trafficking in Human Beings, in 2005. The convention is a step in the right direction because it demonstrates the member states commitment to the overall welfare of women and children by protecting them against heinous crimes, such as trafficking. Through the agreement, the members are asked to put curbs on employment agencies facilitating trafficking. There is focus both on prevention and protection with even a clause urging the member states to promote awareness of the problem of trafficking in women and children through media programmes (SAARC, 2002b).

The convention has come under criticism due to its limited scope and incomprehensive definition of “trafficking”. According to Article 1 of the convention, "trafficking" means “...*the moving, selling or buying of women and children for prostitution within and outside the country for monetary or other considerations with or without the consent of the person subjected to trafficking*” (SAARC, 2002b, p. 1). The civil society groups and NGOs have been demanding the definition to be changed to the following:

All acts involved in the recruitment, transportation, forced movement and/or settling and buying of women and children within and/or across borders by fraudulent means, deception, coercion,

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direct and/or indirect threats, abuse or authority for the purpose of placing a woman and/or child against her/his will with or without her/his consent in exploitation and abusive situations, such as,

forced prostitution, marriage, bonded slavery and slavery like practices, begging, organ trade, drug smuggling, use in armed conflict, etc.

(Raghuvanshi, 2002, p. 3).

The later definition is adapted from the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime. According to the UN protocol, the following is the definition of human trafficking:

Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”

(UNODC, 2004, p. 42).

Since the development and approval of the contention, civil society groups and NGOs have been unhappy with this tokenises move of SAARC. If, on the one hand, some NGOs limited their response to suggested policy recommendation and workshops, others like the South Asian March against Child Trafficking (India) have been proactively campaigning against SAARC. An example of that is the demonstration organised by the organisation, involving hundreds of former child victims of trafficking, bonded and child labour, to question the relevance of the SAARC convention/actions against human trafficking. The group stated that the SAARC promises on this issue have been “inadequate and undelivered” (SAMACT, 2007). At this event, Kailash Satyarthi, the leader of the march said:

“If SAARC cannot tackle the most heinous organised crime of human trafficking with adequate political will and honesty, what else can we expect for the rituals of annual SAARC summits ... Children from Bangladesh are bought and sold like animals”

(SAMACT, 2007).

The agreement of cooperation against trafficking in women and children is around for over eight years, and still not much has been done to take actions against network responsible for human trafficking in South Asia, and beyond. In addition, SAARC is yet to create an institution to implement the collective mission stated in the convention against trafficking. Nonetheless, the Task Force was created in response to the directions provided by the heads of state in the declaration of the Eleventh SAARC Summit (SAARC, 2002a) to monitor the evaluation of cooperation in this area (SAARC, 2008). The Task Force met in 2007, 2008, 2009 and 2010. There have been agreements on sharing of relevant information by the governments and NGOs, but nothing has happened yet. Moreover, while a special session of the Task Force held in 2010, it was decided to establish two regional Toll-Free help lines dedicated to helping the victims of trafficking in the region. It was an exciting action-oriented development but was not launched until September 2011 (SAARC, 2011).

Considering some NGOs in the SAARC region have expertise in the area of preventing human trafficking and rehabilitation of the victims of this crime, SAARC has engaged them in implementing its agenda. SAARC also realises that it was due to the lobbying of certain NGOs that led the organisation to take up this issue on its agenda. Therefore, the Task Force responsibility to implement the convention has been a forum of interaction among government officials and the members of relevant NGOs from all the member states. For example, for a meeting in July 2007 that was held in New Delhi, Pakistan was represented by a member of the Federal Investigation Authority and the head of the Lawyers for Human Rights and Legal

Aid (LHRLA). The involvement of the civil society groups could be the reason that the meeting concluded on a clear action plan. It was decided that information on best

practices would be shared by both government agencies and NGOs to combat trafficking with the SAARC Secretariat by November 2007 and afterwards annually. This has not happened due to an absence of follow up by the SAARC Secretariat. Therefore, SAARC is advised to hand over the task to proactive NGOs working in this area and such an institute could be funded under the Social Window of the SAARC Development Fund (SDF) (Lama, 2008).

At the 2007 meeting of the Task Force, another decision was made that the government of India would prepare a Standard of Operating Procedure (SOP) to implement various provisions of the convention and would share with the SAARC Secretariat by September 2007. New Delhi has not developed SOP as of September 2011. Without SOP, the convention will remain unimplemented because there are no additional details available, for example, related to the repatriation of victims. Those details are crucial for both government bodies and NGOs because that will allow them to approach relevant authorities across the region.

REGIONAL ACTIONS

The United Nations and its agencies have been playing a central role about spreading awareness on ending violence against children in South Asia. In this respect, in 2005 the two-day Regional Consultation for the UN Study on Violence against Children was organised by the South Asia Coordinating Groups against Commercial Sexual Exploitation of Children and Women. The Government of Pakistan hosted the consultation and ministers led five of the country delegations from relevant ministries, and this reflects seriousness towards this very important issue. The intention of the Regional Consultation was to review the situation of violence against children in the region, analyse legal frameworks, good practices and to come up with recommendations for regional action plan that addresses the priority issues to fight against the problem of violence against children (UNICEF 2005:3). Irrespective of

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enthusiasm reflected by all the delegations at the event, the participants could not create a viable action plan.

Nonetheless, due to a constant push from the local and international NGOs working on the issue of violence against children, SAARC has initiated some initiatives. Actions on this subject via SAARC have also been the product of the SAARC Development Fund (SDF), which for the first time in the history of this Association has made it possible for the member states to give reality to their written commitments. So far, SDF itself is a young body, created in 2008. The Fund was set up with a generous contribution from the Government of India being the biggest donor with small contributions from other member states. China, being a SAARC Observer, has also contributed towards SDF. The basis objective of SDF is the welfare of the people of South Asia and with this aim; the Fund has provided \$2.6 million to the South Asia Initiative to End Violence against Children (SAIEVAC) (SAIEVAC 2012, p. 19). The SDF-funded projects aim at creating regional and national level mechanisms for protecting children against violence of any form. It is too early to evaluate the performance of this project because it has only been funded in 2012.

OTHER POSITIVE DEVELOPMENTS

There have been positive developments in South Asia in relations to ending violence against children. In the case of Sri Lanka, the Human Rights Committee has urged the abolition of all corporal punishment in schools and penal system. In India also, the High Court of New Delhi in 200 directed the state to ensure that all children are protected against corporal punishment. Irrespective of these developments corporal punishment is rampant in South Asia and not only that is legally acceptable. For example, corporal punishment is lawful in the home as per the legal systems in all the SAARC member states. In addition, corporal punishment is prohibited only in the Maldives and not in other seven countries of South Asia (SGSVAC, 2005). Thus, the governments in South Asia are faced with cultural challenges.

The above-mentioned positive developments reflect the strong commitment of and the role of NGOs and UNICEF in relation to local and regional measures

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aimed at ending violence against children. It has largely been a donor-driven sector where government actions have largely been funded by INGOs and inter-governmental organisations. The consortiums of NGOs working mostly in collaboration with relevant government agencies drive the child protection initiatives. For example, there is a network of NGOs, such as Sahil, Rozan, Society for the protection of the rights of the child, (SPARC) working against child sexual abuse in Pakistan and regularly collaboration with the National Commission on the Rights of Children. NGOs have gained a lot of prominence in South Asia because largely they have been addressing issues of child welfare.

CONCLUSIONS

The problem of violence against children was present at national and regional levels in South Asia. However, the biggest push towards concrete measures came from processes of consultations at various levels. In this regard, the role of several inter-governmental and INGOs (e.g. UNICEF), are important because that made this issue a high priority in the region. Consequently, SAIEVAC has been created as a regional mechanism to fight this collective challenge. SAIEVAC is the result of a dynamic process of partnership involving governments, children, international organisations and civil society.

The paper began with quoting comments from a child delegate from Pakistan Ms. Neha Zia, asking for proper measures to protect children. Therefore, it is appropriate to end this paper with the resonance of seventeen child voices of the area that remarked ‘they will be frustrated if adults fall short on implementation’ (SAIEVAC, 2012, p. 17). It was urged that impediments and bottlenecks that obstruct implementation of the recommendations and the realization of children’s rights must be identified and dealt with in these countries. The South Asian countrywide initiatives, regional cooperation, and cross-border collaboration for the development of child protection system, will find better anchoring as a result of the most recent study of child protection systems, which SAARC itself has initiated. The report of the initiatives so far in the region suggest that there is a need to reinforce

multi-stakeholder partnerships at national and regional levels harm reduction and develop best practices in child labour, in these countries.

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