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PROTECTION OF THE FEMALE CHILD: THE MOTHERS OF OUR FUTURE—CASE STUDIES OF INDIA, PAKISTAN, BANGLADESH AND SRI LANKA

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Historically, children have been disposable people.¹ Until the late 19th century, the rights of the child were largely ignored. Children were treated as the property of their parent or caregiver, to be disposed of by the prominent adult in their life, as they wished.² It was permissible for children to be exploited, sold, enslaved or abused, as they were considered mere objects.³ This was particularly true of female children. The practice of discriminating against the female child dates back as far as the 4th century B.C.⁴ A Neapolitan practice clearly emphasizes this: upon the birth of a female child, the parents would hang a black flag in front of the home to tell the community that no congratulations were in order, it was only another *female* baby.⁵

Similarly, women were recognized as having few rights, as they were treated as their husband's or father's property and often abused. It was not until recently that women have enjoyed a marginally improved status, allowing them the basic rights their male counterparts had traditionally enjoyed.

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1. See EUGENE VERHELLEN, CONVENTION ON THE RIGHTS OF THE CHILD: BACKGROUND, MOTIVATIONS, STRATEGIES, MAIN THEMES 10 (1994). The author states children have been historically subjected to widespread maltreatment, as law and custom found them to be mere property owned by their parent or caregiver.

2. See *id.* at 9-11.

3. See Kirsten M. Backstrom, Note, *The International Human Rights of the Child: Do They Protect the Female Child?*, 30 GEO. WASH. J. INT'L L. & ECON. 541, 561 (1996).

4. See Cynthia Price Cohen, *The Developing Jurisprudence of the Rights of the Child*, 6 ST. THOMAS L. REV. 1, 7 (1993).

5. See VERHELLEN, *supra* note 1.

There is still much to be done in both children's and women's rights to elevate their status to that enjoyed by adult men. Despite efforts to improve the status of these groups, persons fitting into both categories of women and children, female children, still hold the lowest status of all.⁶ They will suffer as the objects of discrimination based on both age and gender. Perhaps those that will suffer the most are the young females of developing countries, too poor to successfully combat the situation. It seems ironic to their plight that "of all the human rights principles, non-discrimination is the principle most consistently reiterated in human rights treaties."⁷ However, there is not a specific United Nations Convention document dedicated to the problems unique to the female child.

Hope was given to both male and female children alike with the United Nations Declaration on the Rights of the Child ("UNDRC") in 1979, and later the United Nations Convention on the Rights of the Child ("UNCRC") in 1989. In fact, the UNCRC was specifically drafted to include the female child under its umbrella of protection through use of gender-free language.⁸ Additionally, female children may seek refuge in the United Nations Convention on the Elimination of all forms of Discrimination Against Women ("CEDAW"), which calls for additional rights for women.⁹ However, both of these conventions fail to assist the problems of the female child specifically.

The plight of the female child was recognized by the General Assembly in October 1998, when the representative from Namibia introduced texts in the Third Committee stressing the need for the protection of the female child.¹⁰ These texts urged states to "enact and enforce legislation protecting females from all forms of violence, including female infanticide and prenatal sex selection, female genital mutilation, rape, domestic violence, incest, sexual abuse, sexual exploitation, child prostitution and pornography."¹¹ The need for such protection is evident when examining the implementation of the Convention on the Rights of the Child in countries where traditions promote discrimination against

6. See Backstrom, *supra* note 3, at 541.

7. Cynthia Price Cohen, *The United Nations Convention on the Rights of the Child: A Feminist Landmark*, WM. & MARY J. OF WOMEN & L. 29, 30 (1997).

8. See Cynthia Price Cohen, *The Role of NGOs in Drafting of Children's Convention*, 12 HUM. RTS. Q. 137, 142 (1990).

9. See Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/46 (1979) [hereinafter CEDAW].

10. See UN: *Need for Legal Reforms to Ensure Female Child's Human Rights Stressed in Text Introduced by Namibia*, M2 PRESSWIRE, Oct. 30, 1998, available in 1998 WL 16530741.

11. Backstrom, *supra* note 3, at 542.

women, and in particular, against the female child.¹²

Countries themselves are attempting to combat the problem even though there is no specific document that directs countries to enact legislation and programs that address the needs of those subject to gender and age discrimination. India, Bangladesh, Pakistan and Sri Lanka are combating traditional socially accepted forms of discrimination and abuse targeted against the female child by launching the first ever "South Asian Association for Regional Cooperation Decade of the Girl Child."¹³ The program was begun by a week of education which included broadcasts and dissemination of information combating harmful practices to female children.¹⁴ However, finances in these developing countries are already stretched thin, and the amount that can be allocated to such a cause is limited. Ultimately, the task of protecting female children may fall upon various non-governmental entities.¹⁵ These entities, charged with assisting countries in implementing the Convention, must act to eradicate traditional practices that enforce such discrimination.

This paper will explore the myriad of issues affecting female children living on the Indian Subcontinent. Part I will provide background information on the United Nation's Convention on the Rights of the Child. It will also explore the cultural and geographical impediments to the implementation of the UNCRC in India, Pakistan, Sri Lanka, and Bangladesh. Part II will explore the obstacles female children face during three distinct periods of life: before birth, infancy through early childhood, and coming of age. It will also provides an analysis of cultural and economic factors which impact the treatment of the female child. Part III will provide concluding observations for improvements which may be applied in India, Pakistan, Sri Lanka, and Bangladesh, and ultimately, the entire Indian subcontinent.

I. BACKGROUND INFORMATION

A. *Applicable Law*

Children's rights have been in development since the middle of the nineteenth century.¹⁶ In an attempt to bring a basic list of rights to chil-

12. *See id.*

13. *India Steps to Strengthen Rights of the Female Child*, THE HINDU, Sept. 24, 1998, available in 1998 WL 15914595.

14. *See Initial Reports of States Parties Due in 1995: India*, 07/07/97, Committee on the Rights of the Child, para. 87, U.N. Doc. CRC/C/28/Add. 10 (1997) [hereinafter *Indian Report*]; *Initial Reports of States Parties Due in 1992: Bangladesh*, 07/12/95, Committee on the Rights of the Child, para. 18, U.N. Doc. CRC/C/3/Add. 38 (1995) [hereinafter *Bangladeshi Report*].

15. *See Indian Report*, *supra* note 14, at para. 87.

16. *See Cohen*, *supra* note 4, at 7.

dren worldwide, the United Nation's General Assembly unanimously adopted the United Nations Convention on the Rights of the Child in November of 1989, exactly ten years after adopting the Declaration on the Rights of the Child.¹⁷ The Convention received a surprising acceptance from the world-wide community when it was adopted by the General Assembly on November 20, 1989.¹⁸

In the Convention, an international human rights treaty, the term "child" is defined as "every human being below the age of eighteen years, unless, under the law applicable to the child, majority is attained earlier."¹⁹ The term "right" is a legal claim under international law which can be part of either two subgroups: those arising under a civil-political umbrella or those arising under the economic-social-cultural area.²⁰

The implementation of the Convention requires both monitoring and reporting of each state party signing the Convention.²¹ Each state party will first provide a report to the Committee of the Rapporteur.²² After the report has been reviewed, the Committee will provide feedback and hopefully fruitful dialogue with the state party.²³ If needed, the Committee will monitor the state parties' progress regarding certain areas of the Convention.²⁴ This additional monitoring may require the state party to provide additional reporting to the Committee.²⁵

The Convention seems to be the most effective aid for ending discrimination against the female child. Much of this can be accredited to the gender-free pronouns used in drafting the Convention.²⁶ Additionally, Article Two requires that state parties must ensure that the rights set forth under the Convention will be protected regardless of gender.²⁷ Unfortunately, however, a document drafted to fit the unique needs of the female child has yet to be seen.

17. See United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) [hereinafter UNCRC].

18. All of the countries in the world have adopted the convention with the exception of two countries: the United States of America and Somalia.

19. UNCRC, *supra* note 17, at art. 1.

20. See *id.*

21. See Laurie Nicole Robinson, *The Globalization of Female Child Prostitution: A Call for Reintegration and Recovery Measures Via Article 39 of the United Nations Convention on the Rights of the Child*, 5 IND. J. GLOBAL LEGAL STUD. 239, 253-257 (1997).

22. See Cohen, *supra* note 7, at 52.

23. See *id.* at 53.

24. See *id.*

25. UNCRC, *supra* note 17, at art. 43

26. See Cohen, *supra* note 8, at 139.

27. See UNCRC, *supra* note 17.

1. India

India is the seventh largest country in the world, with a population of more than 302 million children living within its borders.²⁸ The overall population of India is young, consisting of nearly 36% of children below the age of fifteen.²⁹ India ratified the UNCRC in December 1992, which allowed the Convention to come into effect in 1993.³⁰

Interestingly, and perhaps explicative of the high youth population, the dominant religion of India is Hindu, with approximately 82% of the population professing to the Hindu faith.³¹ This is important to note, as the Hindu faith has elevated the status of children. The Hindu religion regards children as gifts of God, who must be cared for and nurtured by the family and society.

A "child," as defined in Indian statutes, is typically defined as any person under the age of 14,³² which is in conflict with the intentions behind the UNCRC.³³ India admits in its initial report that the age of defining the status of "child" is a dilemma. India stated that the UNCRC definition would have adverse ramifications on program planning and the budgetary provisions of the country.³⁴ While representatives vowed that the change in age would be considered, India does not readily accept the UNCRC definition of the child.³⁵

India has recently made efforts to emphasize the importance of the education of all children, and specifically that of female children. A number of national policies have been enacted to further the education of female children. One such policy, the Program of Action of 1992, recognizes education as fundamental to the development of children and stipulates that free and compulsory education to all children up to age 14 be provided by the year 2000.³⁶

Despite the progress in some areas, India's report indicates many unsettling discriminations against the female child, including child marriages,³⁷ legislation discriminating against females³⁸ regarding property rights, separation, and child custody, high incidence of malnutrition in

28. See *Indian Report*, *supra* note 14, at para. 1.

29. See *id.* at para. 5.

30. See *id.* at para. 23.

31. See *id.* at para. 1.

32. See *id.* at para. 65.

33. See Cohen, *supra* note 7, at 55 (stating that legally defining the age of majority at less than age eighteen is "incompatible with the principles and provisions of the Convention").

34. See *Indian Report*, *supra* note 14, at para. 65.

35. See *id.* at para. 65-67.

36. See *id.* at para. 221.

37. See *id.* at para. 92.

38. See *id.* at para. 84.

female children,³⁹ and educational discrepancies.⁴⁰ Financial restraints on the country combined with cultural views make implementation of the UNCRC difficult.

2. Pakistan

Located in the northwestern portion of the Indian subcontinent,⁴¹ Pakistan came into being as a result of the demand of a separate home for Muslims living on the subcontinent.⁴² Pakistan gained its independence from the British on August 14, 1947.⁴³ The majority of the population is Muslim, though there are significant minority groups consisting of Sikhs, Hindus and Christians.⁴⁴ Pakistan's population is young, with children under the age of 15 constituting 44% of the overall population.⁴⁵

Pakistan initially ratified the UNCRC in November 1990, with a general reservation that all provisions of the UNCRC be interpreted in light of the principals of Islamic laws and values.⁴⁶ This meant that where the UNCRC provisions conflicted with Islamic law, the religious interpretation superceded the UNCRC.

The Committee reviewing the Pakistani State Party Report blasted the country for its "Utopia-type" report. Pakistan's report contains flowery language that attempts to assure the Committee that the problems with children's rights are few and far between.⁴⁷ Additionally, Pakistan states that articles of the UNCRC do not conflict with either the Constitution or the Islamic precept, and that Pakistan shall implement the articles to the fullest extent possible within the socio-cultural and economic restraints.⁴⁸ The Committee concludes its observation by stating that Pakistan did not follow proper reporting guidelines and instructed Pakistan to resubmit the report before the end of 1996.⁴⁹ This resubmission has never materialized.

39. See *Indian Report*, *supra* note 14, at para. 85.

40. See *id.* at para. 84.

41. See *Initial Reports of States Parties Due in 1993: Pakistan*, 28/05/93, Committee on the Rights of the Child, para. 1, U.N. Doc. CRC/C/3/Add. 13 (1993) [hereinafter *Pakistani Report*].

42. See *id.* at para. 4.

43. See *id.* at para. 1.

44. See *id.* at para. 4.

45. See *id.* at para. 6.

46. See *Pakistani Report*, *supra* note 41, at para. 31.

47. See *Concluding Observations of the Committee on the Rights of the Child: Pakistan*, 04/25/94, Committee on the Rights of the Child, U.N. Doc. CRC/C/15/Add. 18 (1994) [hereinafter *Concluding Observations: Pakistan*].

48. See *Pakistan Report*, *supra* note 41, at para 31.

49. See *Concluding Observations: Pakistan*, *supra* note 47, at para. 35.

3. Sri Lanka

Sri Lanka is an island nation located at the southern tip of the Indian mainland, surrounded by the Indian Sea. Sri Lanka gained its independence in 1948 and is currently governed by a multiparty democracy.⁵⁰ The country has a total population hovering at approximately 17.4 million persons.⁵¹ Interestingly enough, almost half of the population is under age eighteen.⁵²

Though the Sri Lankan Constitution forbids discrimination based on gender,⁵³ other recognized laws do not comply with this standard. The Constitution recognizes three different types of personal laws under which certain age limits may vary.⁵⁴ These personal laws include: Kandyan, Thesawalamai and Muslim laws.⁵⁵ These personal laws are designated as the highest governing laws by certain religious or ethnic groups residing within Sri Lanka's borders.⁵⁶ Under this designation, the particular personal laws governing the religious or ethnic groups supercede the laws of Sri Lanka, including the Constitution.⁵⁷

Unfortunately, the definition of "child" is not uniformly adopted in laws across the board.⁵⁸ This practice ultimately discriminates against the female child, as typically, they are deemed mature well before their male counterparts.⁵⁹ This is evident in the Kandyan Marriage and Divorce Act of 1952, which allows female children to be married with consent of their parents at the tender age of twelve years.⁶⁰ Additionally, the Muslim Marriage and Divorce Act of 1951 prohibits the registration of a marriage of a female under twelve years of age unless the authority of the Quazi of the area in which she resides is obtained.⁶¹ The Approval of the Quazi will allow a girl under the age of twelve to marry, thus providing a method of circumventing the age requirement stated in the Muslim Marriage and Divorce act of 1951.

Aside from recognized laws that are discriminatory, the female child who is born a citizen of Sri Lanka must also worry about surviving day to

50. See *Initial Reports of States Parties Due in 1994: Sri Lanka*. 05/05/94, Committee on the Rights of the Child, para. 3, U.N. Doc. CRC/C/8/Add. 13 (1994) [hereinafter *Sri Lankan Report*].

51. See *id.* at tbl.1.

52. See *id.*

53. See *id.* at para. 5.

54. See *id.* at para. 16.

55. See *id.* at para. 5.

56. See *Sri Lankan Report*, *supra* note 50, at para. 16.

57. See *id.*

58. See *id.* at para. 12.

59. See *id.* at tbl. 3.

60. See *id.* at para. 14, tbl.3.

61. See *Sri Lankan Report*, *supra* note 50, at tbl.3.

day in poverty. Poverty plagues roughly 28% of all families in Sri Lanka.⁶² Low birth weight and malnutrition are quite common.⁶³ Due to widespread hunger, many children, though more typically female, suffer from serious health concerns ranging from malnutrition to stunting of growth. Recently, improvement efforts have been made in the area of nutrition, as a subsidized food ration program has been introduced by the government.⁶⁴ Even with these improvements; however, more needs to be accomplished in the area of nutrition. Mid-day meals at primary schools and special feeding programs for needy mothers and preschool children have been developed.⁶⁵

Other health concerns plague the Sri Lankan population. Infant mortality is high, though it is beginning to decline.⁶⁶ This is because children are unlikely to receive medical care in a hospital, as there are as few as 4,000 beds allocated nation-wide for children.⁶⁷

Child labor is also an area of concern, as children as young as fourteen can be employed in a factory or shop.⁶⁸ Many young females will labor at home, caring for their younger siblings or assisting with household work so that their parents may pursue some economically profitable activity. Other young females will be forced into the sex trade or will suffer the fate of an early marriage to support themselves.

4. Bangladesh

Bangladesh is located on the Indian Subcontinent, due east of India.⁶⁹ Bangladesh is a country that is burdened by devastating floods which cause poverty and the spread of disease. Like Sri Lanka, Bangladesh has implemented a number of personal laws, under which it recognizes laws governing specific subcultures in its midst.⁷⁰ Another similarity with Sri Lanka is that the Bangladeshi government recognizes Muslim laws that allow females to be married as soon as they reach puberty.⁷¹ The age when a female reaches puberty is estimated to be at twelve years of age.⁷²

In many countries in South Asia, including Bangladesh, it is common for people to prefer a male child, rather than a female child.⁷³ This prefer-

62. *See id.* at tbl.1.

63. *See id.* at para. 9.

64. *See id.* at para. 2.

65. *See id.*

66. *See Sri Lankan Report, supra* note 50, at para. 39.

67. *See id.*

68. *See id.* at tbl.3.

69. *See Bangladeshi Report, supra* note 14, at para. 4.

70. *See id.* at para. 43; *see also Sri Lankan report, supra* note 50, at para. 40.

71. *See Bangladeshi Report, supra* note 14, at para. 43.

72. *See id.*

73. *See id.* at para. 52.

ence is blamed on the misconception that female children are not as productive in the workforce as males, and thus the advancement of the social status of the family is more unlikely with a female child.⁷⁴ Furthermore, marriage of the female child places a financial burden on her parents.⁷⁵

Poverty and ignorance combine to make malnutrition a great concern for all children. Many families cannot afford to adequately nourish their children. Add to this the fact that most females will receive roughly 20% less calories per day than male children, and the result will be a potentially lethal situation for female children.⁷⁶ In an attempt to remedy this situation, the Bangladeshi government has launched a decade-long action plan which will place a quota on government jobs, raise the literacy rate among females and emphasize the general human rights of females.⁷⁷

II. OBSTACLES FACED BY THE FEMALE CHILD

A. Prejudice Before Birth

In the craze for producing a male child, women are often punished for bearing female children. Women receive great pressure from their husbands and in-laws to bear male children, or suffer abuses and tortures if they produce a female child.⁷⁸ This demand has forced women to resort to sex-selective abortions, a process called "selective birth."⁷⁹ To further this program, mobile sonogram and amniocentesis units are dispersed throughout India. It is estimated that India has lost over one million female fetuses due to selective abortions between 1981 and 1991.⁸⁰ This is despite a law prohibiting sex determination procedures for the purposes of abortion.⁸¹ The number of selective abortions continues to increase, as there is increased access to sonogram clinics across India.⁸²

The UNCRC addresses discrimination based on sex, stating that all children should be free of discrimination based upon their sex.⁸³ Selective abortion should be viewed as the highest level of discrimination against the female child as it robs her of her very existence. Due to the fact that

74. See *id.*

75. See *id.* at para. 39.

76. See *Bangladeshi Report, supra* note 14, at para. 18.

77. See *id.*

78. See *Mother Throws Baby into River*, THE INDEP., Oct. 14, 1998, available in 1998 WL 28004701 [hereinafter *Mother Throws Baby into River*]

79. Rick Weiss, *Anti-Female Bias Rises in Asia*, *Studies Show*, THE WASH. POST, May 11, 1996, at A1.

80. See *id.*

81. See *id.*

82. See Sathya Saran, *India Still Unable to See Past the Y Chromosome*, THE WORLDPAPEER, Apr. 8, 1999, available in 1998 WL 5986329.

83. See UNCRC, *supra* note 17, at art. 2.

this problem causes a significant loss of the lives of female children, the UNCRC should adopt interpretation of the article to include selective abortion as a form of discrimination based on sex.

B. Infancy to Early Childhood

Even in the event the female child is born, she still faces a heightened chance of early demise through infanticide. Female infanticide is not uncommon on the Indian subcontinent and can occur through drowning, abandonment or intentional starvation.⁸⁴ A recent case in Bangladesh reveals that the pressure to bear a male child is often very intense.⁸⁵ Monwara Begum, a Bangladeshi citizen, threw her one-and-one-half year old daughter into a river to drown her after Begum had suffered frequent tortures by her husband and in-laws for giving birth to a female child.⁸⁶ In another horrific incident, twin daughters were strangled to death by their own father.⁸⁷ The father blamed his action on his wife because she "continued giving birth to female children only."⁸⁸

The severe poverty in parts of the Indian subcontinent may exasperate the situation, forcing families who may give birth to both male and female children to choose to feed and care for only the males, as they will be better able to care for their parents in the future. Often, a female is not killed before or immediately after birth.⁸⁹ Rather, she will die quietly during the first few years of her life, as discriminating traditions weigh against her and increase her chances of dying.⁹⁰ Often parents who cannot afford medical treatment will delay taking a female child to a doctor until the child is close to death.⁹¹ Furthermore, parents often discriminate against their female children when faced with not enough food for their hungry families.⁹²

1. Nutrition

Female children living on the Indian subcontinent will likely be exposed to risks of poor nutrition. In Bangladesh, a female child is up to 50% more likely to die before age six than a male child.⁹³ Poverty is a

84. See Kumkkum Chandra, *Rising Level of Female Mortality*, HINDUSTAN TIMES, Apr. 15, 1998, available in 1998 WL 23885775.

85. See *Mother Throws Baby into River*, *supra* note 78.

86. See *id.*

87. *Law and Order Situation Worsens in Sunamganj*, THE INDEP., Aug. 14, 1998, available in 1998 WL 28002462.

88. *Id.*

89. See Backstrom, *supra* note 3, at 544.

90. See Backstrom, *supra* note 3, at 544; see also Robinson, *supra* note 19, at 493.

91. See Cohen, *supra* note 7, at 41.

92. See *id.*

93. See Feizal Samath, *Development: East Asian Model Still OK for South Asia – World*

way of life for the children of Bangladesh,⁹⁴ and although destructive to all children faced with such suffering, it seems to affect female children more harshly than their male counterparts. It is typical in Bangladesh to see the female child under-nourished in favor of providing her male counterparts with more adequate nutrition.⁹⁵ As stated earlier, a similar situation arises in Sri Lanka, where females are more likely to be given less food to eat so that their brothers may be better nourished.

Recent studies show that female children are more likely to suffer from "acute nutritional deficiencies" than male children would suffer.⁹⁶ Such deficiencies have been a result of economic repercussions resulting from the West Bengal Floods of 1978.⁹⁷ Child nutrition surveys were conducted subsequent to the signing of the United Nation's Convention on the Rights of the Child. The study reflected that about five percent more female children than male children were severely underweight and about two percent more female children suffered from severely stunted growth than male children.⁹⁸

Still, with the introduction of food rationing programs and mid-day meals available at schools, the problems associated with malnourishment run rampant.⁹⁹ Due to cultural practices, many more females than males are unable to attend school, and thus, receive free lunches.¹⁰⁰ More effort must be given to ensure that females will receive a sufficient amount of calories to support their growing bodies.

The female children of India are faced with a high infant mortality rate, which can generally be attributed to malnutrition and an unsanitary environment.¹⁰¹ 6.6 million Indian children suffer from brain damage due

Bank, INTER PRESS SERVICE, Mar. 22, 1998, available in 1998 WL 5986329.

94. See Dr. Maswoodur Rahamn Prince, *Child Nutrition Survey 1995-1996*, THE INDEP., Oct. 5, 1998, available in 1998 WL 28004268. According to the Child Nutrition Survey of Bangladesh, 1995-1996, as high as 60% of Bangladeshi children between the ages of six months to six years were malnourished and suffered from deficient height or weight. Stunting was a direct result of the documented wide-spread malnutrition. *Id.*

95. *Of Amartya Sen, His Works, and Concerns for Gender Equality*, THE INDEP., Dec. 25, 1998, available in 1998 WL 28087362; see also Pamela Boone, *Doing it for Themselves*, GOOD WEEKEND, Nov. 21, 1998, at 64-68, available in 1998 WL 18218921. The effects of malnourishment are common among females as parents may give smaller portions of food to their daughters to ensure the survival of their sons.

96. See *id.*

97. See *id.* (referring to the studies of Amartya Sen which was based on ownership of land, employment type, food habits, education and access to employment opportunity in Bangladesh).

98. See Prince, *supra* note 94.

99. See *Bangladeshi Report*, *supra* note 14, at para. 53.

100. See *id.*

101. See *Health India: Demystifying Malnutrition*, INTERPRESS SERVICE, Jan. 15, 1998 available in 1998 WL 5985340.

to iodine deficiencies, while another 7 million children suffer from a vitamin A deficiency.¹⁰² A substantial portion of these children are female children, as it is customary to feed the male children prior to feeding the female children.

C. *The School-aged Child*

1. Education

Under the United Nations Convention on the Rights of the Child, Article 28 provides that all children have the right to an education.¹⁰³ However, gender discrimination, reinforced by traditional family roles, impacts illiteracy statistics in a profound way. Females are given more household responsibility at a younger age than males in order to prepare them for their role as a wife and a mother.¹⁰⁴ Such responsibilities include "caring for siblings, cooking, cleaning, and heavy domestic chores."¹⁰⁵ The amount of work which accompanies this responsibility, as well as traditional social stereotypes, makes it difficult, at best, for a young female to attend school.¹⁰⁶

Even those families who educate their daughters do so reluctantly. Daughters are still pressured to leave school as they become employable or are able to be married off.¹⁰⁷ Families may even view failure to educate their female children as an asset to their daughters, for parents fear that their daughters will suffer at the hands of their husbands due to their independent views.¹⁰⁸ Additionally, educating the female children may even be viewed as unnecessary, as it will not benefit their parents economically.¹⁰⁹ An educated female will only benefit the family of their future husbands.¹¹⁰

Sri Lanka guarantees the female child a free education from primary school through the university level, although it is unlikely that most females from disadvantaged groups will be able to take advantage of this opportunity. Female children are often burdened with family responsibilities, from caring for their siblings to seeking employment on behalf of the family.¹¹¹ As a result, many of these young females will not be able to attend any type of school.

If education plays a crucial role in eradicating crippling poverty and

102. *See id.*

103. *See* UNCRC, *supra* note 17.

104. *See* Cohen, *supra*, note 7, at 55.

105. *See id.* at 42.

106. *See id.* at 55

107. *See* Backstrom, *supra* note 3, at 548.

108. *See id.* at 549.

109. *See Bangladeshi Report, supra* note 14, at para. 53.

110. *See id.*

111. *See* Cohen, *supra* note 7, at 55; *see also* Backstrom, *supra* note 3, at 556.

providing employment opportunities, education of the female child will have no alternative but to strengthen economic opportunities in Bangladesh.¹¹² It is for this very reason that the Bangladeshi government has battled illiteracy and made primary education compulsory for all children. To assist in combating the notion that education should not be wasted on females, the government has declared education up to the master's level free for female children. By providing free education to female children, it is hoped that this message will reach even the poor, rural families.

2. Sexual Exploitation

As tourism has increased in Sri Lanka, so has the sexual exploitation of the female child.¹¹³ The Sri Lankan government has recognized that sexual exploitation of children represents a serious and harmful form of violence against the female child.¹¹⁴ The new amendments to the Penal Code have been drafted to specifically address the problem.¹¹⁵ Additionally, brothel owners will now face a more certain prosecution due to the enactment of laws targeting them for procuring and trafficking sex slaves, many of whom are children.¹¹⁶ However, these laws do little for female children who are trafficked outside of Sri Lanka and into India, where, if they seek help, are detained in jails as illegal immigrants or for the crime of prostitution.¹¹⁷

For the female children who survive their first six years, the threat of child trafficking and sexual exploitation is a reality in Bangladesh.¹¹⁸ Some female children have no choice but to become a part of the sex trade. In Bangladesh, prostitutes in brothels will give birth to female children who will ultimately become part of the mother's trade.¹¹⁹ This insures that the mothers will be supported in their old age.¹²⁰ Though there is a law prohibiting children from entering into a brothel, it is rarely en-

112. See generally Gouranga Chandra Dhar, *Curse of Illiteracy*, THE INDEP. Aug. 3, 1998, available in 1998 WL 28086032.

113. See *Sri Lanka Report*, supra note 50, at para. 27.

114. See *id.* at para. 11.

115. See *id.*; see also *Sex Workers' Uplift*, THE INDEP., Apr. 22, 1999, available in 1999 WL 11578352.

116. See *Country Reports on Human Rights Practices for 1997 Report Submitted to the Committee on International and Foreign Relations, U.S. Senate, and the Committee on International Relations, U.S. House of Representatives by the Department of State regarding Sri Lanka*, WIN NEWS, Apr. 1, 1998, available in 1998 WL 15486025 [hereinafter *Country Reports*].

117. See Robinson, supra note 21, at 127.

118. See *Sex Workers' Uplift*, supra note 115 (discussing the plight of young Indian women who are forced into prostitution).

119. See *id.*

120. See *id.*

forced.¹²¹ It is unlikely that the children of the sex workers will ever be able to exercise their right to equal education due to the strong societal prejudice against them due to their roots.¹²²

Articles 19 and 34 of the United Nations Convention on the Rights of the Child were designed to alleviate the sexual exploitation of children.¹²³ Article 19 requires each state party to draft and pass legislation to detour sexual exploitation of the child.¹²⁴ Article 34 states an obligation that each state party must meet: each state party must take steps to end "child pornography and child prostitution within their borders."¹²⁵ Measures taken by the state parties must be included in their report to the Committee of the Rapporteur.¹²⁶

3. Health Issues

Violence against females is a major threat to the health of the female child. "Violence against women," as defined by the United Nations, includes "any act of gender-based violence that results in, or is likely to result in, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life."¹²⁷ Under the definition of the United Nations, family abuse, battery, sexual abuse, dowry-related violence, female genital mutilation and other traditional practices harmful to women, exploitation and trafficking in women are all forms of violence.¹²⁸ While the United Nations definition used the word "women," many of the included acts of violence are targeted at the woman before she attains adulthood.¹²⁹ In actuality, the violence may occur during childhood as well.¹³⁰

Studies show that violence against women negatively effects their health. The physical and emotional strains of physical and sexual abuses are serious.¹³¹ Fractures and bruises may be the most short-lived damage

121. *See id.*

122. *See id.*

123. *See* UNCRC, *supra*, note 17, at arts. 19, 34.

124. *See id.* at art. 19 (requiring state parties to enact legislation and provide social and educational measures which protect the female child from violence and sexual exploitation at the hands of their parents, guardians, or person charged with their care).

125. *See id.* at art. 34 (prohibiting the economic exploitation of children through employment in sex trades).

126. *See id.* at arts. 19, 34.

127. Dr. Maswoodur Rahman Prince, *Violence Against Women is a Priority Health Issue*, THE INDEP., June 7, 1999, available in 1999 WL 11579708.

128. *See id.*

129. *See id.*

130. *See id.*

131. *See id.*

to the young female, while the psychological effects are lasting.¹³² The results can also be long-term health threats such as chronic disabilities or depression which may result in suicide.¹³³

4. Female Genital Mutilation

The ritualistic custom of female genital mutilation is often referred to as "female circumcision."¹³⁴ This custom is practiced throughout the Indian subcontinent as a rite of passage. The procedure can range from the cutting or burning away of portions or all of the clitoris, labia minora and labia majora.¹³⁵ There is sufficient evidence to conclude that such surgeries are being performed at an increasingly earlier age, typically occurring sometime between birth and age seven.¹³⁶

The rationales for such ritualized torture are many, ranging from health concerns to honor. Female genital mutilation is practiced as a way to ensure female fidelity.¹³⁷ Additionally, the culture may rationalize the barbaric procedure in a variety of ways: "to ensure the virginity of the female before marriage; as a method of birth control; it as a ceremony celebrating the female child's evolution into womanhood; as a practice of personal hygiene; as a religious requirement; and to prepare a girl to endure the pain of childbirth."¹³⁸

The deforming surgery is performed in unsanitary conditions and without anesthesia.¹³⁹ While the child's family holds her down, the midwife will cut away the child's flesh with poorly sanitized tools which may bear the dried blood of other child victims upon them.¹⁴⁰ The end result is that the child's body is sewn almost completely shut with catgut or held together with thorns leaving only a small opening for urine and menstrual flow.¹⁴¹ Urinary, childbirth, intercourse and menstrual problems, coupled with infections, are the least of the child victim's worries, as the procedure can lead to hemorrhaging, contraction of HIV and ultimately death.¹⁴²

132. See Prince, *supra* note 127.

133. See *id.*

134. See Backstrom, *supra* note 3, at 545.

135. See *id.*

136. See Council on Scientific Affairs, American Medical Association, *Female Genital Mutilation*, 274 JAMA 1714 (1995) [hereinafter Council on Scientific Affairs].

137. See Cohen, *supra* note 7, at 44.

138. See Backstrom, *supra* note 3, at 546.

139. See generally, Council on Scientific Affairs, *supra* note 136, at 1714 (noting that the midwife performing the surgery may use a variety of tools ranging from her own teeth to broken grass, scissors, or razor blades).

140. See *id.*

141. See *id.*

142. See Backstrom, *supra* note 3, at 546.

5. Child Labor

Many Bangladeshi and Sri Lankan females may give up their right to an education in order to pursue employment to assist with family support. A similar situation arises in India and Pakistan.¹⁴³ Some female children in Sri Lanka work in hotels, while others sell food on pathways. However, these jobs may provide a safer environment than what other female children will come to know. In Bangladesh, females as young as six or seven are sent away from their homes to be the domestic servants of other families, where they suffer difficult circumstances such as maltreatment.¹⁴⁴

In India, a country known as having the largest number of child laborers, the census revealed 11.3 million children between the ages of six and 14 work.¹⁴⁵ It is common to see such employment interfering with the child's right to receive an education. India and Pakistan both have a high occurrence of bonded child labor, which is a way for parents to pay off their debts by using their child as a laborer.¹⁴⁶ By using such payment methods, debts are rarely paid in full and they often become the responsibility of the next generation.¹⁴⁷

Though the Sri Lankan Constitution provides for equality in employment for both males and females in the public sector, no such guarantees exist in the private sector.¹⁴⁸ When a job is found by a young female, there is no legal protection against discrimination in pay, sexual harassment or discrimination in job promotions in favor of males.

The practice of child labor is in direct conflict with the UNCRC's articles 31 and 32. In article 31, a child is given the right to enjoy rest and leisure, and Article 32 recognizes the right of a child not to be exploited for economic gain. India has adopted many governmental programs to aid in the education of children and to stop, or at least limit, the occurrences. Nongovernmental organizations ("NGO's") are needed to help assist in the review of the programs to verify the usefulness and to make any necessary recommendations to align each country's practices with the UNCRC.

143. See *Pakistani Report*, *supra* note 41, at 119, 122-23.

144. See *India Steps to Strengthen Rights of the Female Child*, *supra* note 13.

145. See *Indian Report*, *supra* note 14, at para. 281.

146. See Yasmine Rassam, *Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law*, 39 VA. J. INT'L L. 303, 326-327 (1999).

147. See *id.* at 327.

148. See *Country Reports*, *supra* note 116.

D. Coming of Age

1. Early Marriage

Unfortunately, female children are often viewed as burdens to their families.¹⁴⁹ Such a view tends to exasperate the problems of families "marrying off" their daughters at a young age.¹⁵⁰ Females who do not have a marketable skill or a dowry are often taken as a second wife by older men and live in adverse conditions virtually as slaves.¹⁵¹ Sadly, the first wife must recognize the marriage or it will not be recorded.¹⁵² Without such record, the female can be abandoned without a legal remedy upon becoming pregnant.¹⁵³

Marriage is not completely an adult institution in Sri Lanka. While in 1995 the Sri Lankan government raised the minimum age for marriage from age twelve to age eighteen, there is a significant loophole for those of the Islamic faith. Muslims continue to follow their traditional customs for marriage which allow a female as young as twelve to be registered as married.¹⁵⁴ In Sri Lanka, female orphans will likely to suffer an early marriage simply in order to survive.¹⁵⁵

In both India and Pakistan, females are frequently married upon reaching puberty and are forced to cease their education. If a female remains unwed after she has reached puberty, it is more difficult for her to marry, as cultural views discriminate against females who do not marry immediately upon reaching puberty.

In addition to being forced into marriage at a young age, issues related to family law such as marriage, divorce and child custody are not set to a nationalized standard, rather they are adjudicated according to the customs of various religious ethnic groups of Sri Lanka.¹⁵⁶ This does little to ensure the female child will enjoy equal rights in these areas of law, for as the application of the varied practices often discriminate against females.

Additionally, female children, finding themselves in a dangerous situation, have little chance of escaping by divorce. Divorce is highly stigmatized and will cause the young bride to be rejected by her family. If the young bride has borne children, she is likely to lose them to their father, since custody is awarded by a religious presumption which often

149. See *Indian Report*, *supra* note 14, at para. 84.

150. See Cohen, *supra* note 7, at 42.

151. See *id.*

152. See *id.*

153. See *id.*

154. See *Sri Lankan Report*, *supra* note 50, at paras. 16, 19, 23.

155. Tahmina Khanam Biswas, *A Better Life for Destitute Children*, THE INDEP. Apr. 19, 1999, available in 1999 WL 11578228.

156. See *Country Reports*, *supra* note 116.

finds in favor of the father.¹⁵⁷

2. Dowry Killings

"Dowry," the practice of the family of the bride providing the family of the husband with money or property in exchange for the marriage of their daughter,¹⁵⁸ is a tradition practiced throughout the Indian subcontinent.¹⁵⁹ A typical dowry is equivalent to a family's total earnings for several years.¹⁶⁰ Such a practice serves to reinforce the concept that female children are "economic liabilities."¹⁶¹ It also places an additional burden on already strained families. In Bangladesh, custom dictates that the parents of a female must pay a dowry to her future husband's family.¹⁶² Dowries may consist of money or property.¹⁶³ Husbands and their families place enormous pressure on the bride's family to supply a dowry that will sufficiently raise their economic status.¹⁶⁴ Torture of the new bride will often follow a small dowry. Additionally, an insufficient dowry can spell murder for the bride, as Bangladeshi women are still subjected to dowry-related killings.¹⁶⁵ On average, seventeen brides are killed every day.¹⁶⁶ Death can be inflicted by burning, poisoning and strangulation.¹⁶⁷ Many reports show that a majority of brides who die of homicide are murdered by their husbands or ex-husbands,¹⁶⁸ although it can sometimes include the husband's family.¹⁶⁹ In the event the bride does not suffer death at the hands of her husband, she must endure continuous torture and possibly be pressured to commit suicide.¹⁷⁰

India has enacted dowry and dowry violence statutes; however, they

157. *See id.*

158. *See* Anshu Nangia, *The Tragedy of Bride Burning in India: How Should the Law Address It?*, 22 BROOKLYN J. INT'L L. 637 (1997).

159. The tradition of giving dowry upon the marriage of a daughter was originally practiced by the upper classes alone. The gifts bestowed at the marriage were gifts given to the daughter to take her into her new married life. The tradition has subsequently spread to the lower castes. More recently it has been used as a quick way for the grooms family to accumulate wealth. *See* Laurel Remers Pardee, *The Dilemma of Dowry deaths: Domestic Disgrace or International Human rights Catastrophe?*, 13 ARIZ. J. INT'L & COMP. L. 491, 498 (1996).

160. *See id.* at 498.

161. *See* Backstrom, *supra* note 3, at 551-552.

162. *See* Pardee, *supra* note 159, at 498.

163. *See id.*

164. *See id.*

165. *See* Prince, *supra* note 127.

166. *See* Backstrom, *supra* note 3, at 551.

167. *See* Pardee, *supra* note 159, at 498.

168. *See id.* at 499.

169. *See id.*

170. *See* Backstrom, *supra* note 3, at 549.

have been unsuccessful due to the acceptance of the practice by society.¹⁷¹ In a country which views the broken marriage of a daughter as a mar on the whole family, it is not uncommon to see the bride returned to the hands of an abusive husband.¹⁷²

Finally, a bride has no identity as a human being outside that of her husband.¹⁷³ If during her married life, an Indian female's husband dies, she will be expected to perish with him in a ritual called *sati*.¹⁷⁴ The Indian practice of *sati* is an ancient ritual wherein the wife follows her husband to death by throwing herself onto the funeral pyre.¹⁷⁵ This amounts to the cremation of the dead husband and his still-living wife.¹⁷⁶

3. Early Pregnancy

Early marriage is compounded by the many pregnancies an elongated period of cohabitation can bring.¹⁷⁷ A woman's lack of education is directly attributable to maternal and child mortality.¹⁷⁸ Information about delaying marriage and pregnancy must be disseminated amongst the populations.¹⁷⁹ The young mother's body is traumatized by pregnancy while it is still immature, with frequent, closely spaced pregnancies.¹⁸⁰ Pregnancy coupled with the demands of breastfeeding, will result in both a malnourished mother and child.¹⁸¹ Through the efforts of the Bangla-

171. See Nangia, *supra* note 158, at 640-42.

172. See generally Pardee, *supra* note 159, at 495 (discussing the Indian culture and its requirement for maternal families to "eschew" their daughter from there home after her marriage. Her parents are never to allow her to return to their household, even in the instance of spousal abuse. The abandonment or divorce of a bride is a disgrace to her family as well as a stain on her honor. This is why many relatives and neighbors refuse to allow assist a bride who escapes an abusive home).

173. See The Bride Burning Syndrome, THE HINDU, Apr. 28, 1998 available in Lexis Emerging Markets Datafile.

174. "*Sati*" is the act of a daughter or wife throwing herself on the funeral pyre of her father or husband. This is a practice that is reflects the belief that a man can take his worldly possession with him into his next life if they are burned with his body. *Sati* is considered an honorable act for women which is likely to bestow great blessings on the next generation. If a woman acts to perform *sati*, her next 7 generations will have the ability to immediately pass into the afterworld on their deaths. For this reason, combined with the woman's low value without a husband, that the husband's family will pressure the bride to perform *sati*. See Pardee, *supra* note 159, at 497.

175. See *id.*

176. See *id.*

177. See Backstrom, *supra* note 3, at 550.

178. See Judy Mann, *In World Health: Putting Pregnant Women First*, THE WASH. POST, Apr. 8, 1998, at C23.

179. See *id.*

180. See *id.*

181. See *id.*

deshi and Sri Lankan governments, with assistance from NGO's, prenatal care has been increased.¹⁸² Family planning services are more widely available, but still do not accommodate women in extreme rural portions of these countries.¹⁸³ Access to assistance in the birth process must also be increased. By training women as midwives, these countries can increase the availability of pre- and post-natal care, extending care far beyond its current coverage.

Efforts to increase the knowledge of prenatal care and infant care among women of the Indian subcontinent must be increased. Additional food rations provided by both the Sri Lankan and the Bangladeshi governments have been successful in assisting pregnant women to receive better nutrition.¹⁸⁴ Ultimately, it is the general education of these mothers that will improve infant mortality rates and provide a better ability to prepare surviving children to socially participate in their futures.

E. Impact of Nongovernmental Organizations

NGO's were instrumental in the drafting of the United Nations Convention on the Right of the Child.¹⁸⁵ The primary purpose of their assistance in drafting was to provide governments with a vast array of expertise in areas critical to the well being of the child.¹⁸⁶ Even though these NGO's initially envisioned themselves as only having a limited life, unlikely to extend beyond the adoption of the Convention by the General Assembly, this has not been the case.¹⁸⁷

The role of NGO's has extended into the implementation of the Convention.¹⁸⁸ A special provision in Article 45 of the Convention states that "other competent bodies" as the Committee deems appropriate are specifically invited to provide expert advice on the implementation of the Convention.¹⁸⁹ The words "other competent bodies" were specifically meant to include the various NGO groups that assisted in the drafting process.¹⁹⁰ "Other competent bodies" was used a second time in article 45, paragraph (b) to state that the committee shall provide the NGOs with "any reports from State Parties that contain a request, or indicate a need,

182. *See id.*

183. *See Mann, supra* note 178.

184. *See Sri Lankan Report, supra* note 50, at para. 2; *see also, Bangladeshi Report, supra* note 14, at para. 109.

185. *See generally, Cohen, supra* note 8, at 137-47 (stating that the various NGO groups were responsible for incorporation of gender-neutral language and various other goals of special-interest groups).

186. *See id.* at 137.

187. *See id.* at 145.

188. *See id.* at 142.

189. UNCRC, *supra* note 17, at 45.

190. *See Cohen, supra* note 8, at 146.

for technical advice or assistance." This seems to be a mandate for NGO participation in the implementation of the UNCRC.¹⁹¹

III. CONCLUSION

A. Governmental Action

Despite efforts made by state party governments under the UNCRC, there still remains much to be done in the area of improving the rights of female children living on the Indian Subcontinent. Poverty is noted as the reason most young females will turn to prostitution, because their families are unable to provide basic necessities such as food, clothing and shelter.¹⁹² Lack of education helps to promise that the female child will remain under control of her male superiors.¹⁹³ Increased governmental efforts to provide education and vocational training will assist in the eradication of such adverse poverty. Such programs will offer opportunities for entire families to improve their economic status while significantly improving their standard of living. Ultimately, the implementation of such programs for males and females alike will have no alternative but to improve the living conditions and social status of the female child living on the Indian subcontinent.

B. NGO Assistance

While the actions of governments are needed to implement the UNCRC, they are far from being considered sufficient. Not only should the state party governments be commended and supported, but also challenged and occasionally opposed if the true spirit of the UNCRC is to be realized. It is in the need for support and critical analysis of these governments that the role of NGO's has shifted to an integral part of the implementation of the Convention.

Expanding the membership of the NGO's into developing countries such as India, Pakistan, Bangladesh and Sri Lanka, as well as allowing the NGO's to assist in monitoring enforcement of the Convention, plays a crucial role in improving the lives of these young females. The presence of these groups serves to reinforce the goals of the Convention while adding additional funding and awareness to combat areas of concern.

Continuation of such NGO forums, similar to those as have been established in Sri Lanka, should be continued with enthusiasm. Such forum was created in accordance with Article 40 of the United Nation's Convention on the Rights of the Child. The purpose of the forum is to assist and monitor the Sri Lankan government in the implementation of the articles found in the Convention. The activities include training and

191. UNCRC, *supra* note 17, at art. 45(b).

192. *See id.* at 243-244.

193. *See id.* at 245.

education in human rights with increased emphasis on children's rights, public awareness programs and participation in the government's initiatives for revising legislation.

When NGO's are persuasive, they will likely lead to both private and public action to ensure that the government implements the standards addressed in the Convention.¹⁹⁴ History indicates that "the morally advanced positions will not always win out under such conditions."¹⁹⁵ It is hoped that NGO's, through active and tenacious involvement, should be persuasive enough to rally support through education and "stimulation of the moral will to implement."¹⁹⁶ Among these NGO's are the Red Cross, The International Save the Children Alliance, The Christian Children's Fund and Amnesty International.¹⁹⁷ Such a presence will increase the dissemination of information to these young women and their families, which may allow for these young females to learn that they have value and rights upon which to rely.

194. See Stuart N. Hart & Laura Thetaz-Bergman, *The Role of Nongovernmental Organizations in Implementing the Convention of the Rights of the Child*, 6 *TRANSNAT'L L. & CONTEMP. PROBS.* 373, 376 (1996).

195. *Id.*

196. *Id.*

197. See *id.* at 377.