

SUMMARY

MAPPING RESPONSIBILITY PRINCIPLES IN SAARC COUNTRIES WITH REFERENCE TO VULNERABLE GROUPS

There is a growing realization amongst those working in development that strategies based on economic models have failed to bring about genuine and positive change for many people. This has led to the search for new ways of structuring programs and approaches that look beyond economics, and into the political, social and cultural world. Looking at citizenship means looking at the people who make up a group, community or nation, and how they work within the group to guide the way it functions. Taking people's activities, roles and responsibilities as a starting point opens up new possibilities for addressing, and indeed redressing, the marginalization of groups such as women and children.

Background to the Study

The interactions with the legal experts and human rights defenders pointed towards the need to impart legal impetus to the notion of responsibilities in various countries. The facts that the duties and responsibilities have not been articulated well in the legal frameworks as well as the reluctance of people working with the rights based approach to accept 'responsibilities approach' as complementary to the 'rights based approach.' Hence growing concern over making responsibilities legally binding and enforceable and the need to establishing the link between Rights and Responsibilities as complementary to each other were the prime mover for initiating this study. Motivated with the outcome of this exploratory study and the need to establish the responsibilities approach as complementary to the rights approach, an attempt was made to trace the component of 'responsibility' in the various jurisdictions. To start with, especially considering that the study is being coordinated at present from India, it was decided to focus primarily on the South Asian situation.

Objectives

In the above-mentioned context, with the need to understand the legal stature of the 'responsibilities' in the South Asian region, following objectives were articulated to be achieved through the present study:

- To enable the understanding and clarity on the status of duties and responsibilities of individuals, groups, communities and state as articulated in the identified constitutional frameworks
- To facilitate an objective assessment of the legal footing of the constitutional provisions concerning duties and responsibilities
- Imparting lucidity to the duties enumerated and the processes involved towards enabling legal enforcement of duties
- To evolve a set of key principles that could potentially be universalized (with relevant variance) for inclusion in the legal frameworks for enforcing responsibilities

It was also expected from the study to achieve following associated longer term objectives:

- Providing a platform for discussing the issues arising out of the study on comparative constitutions from different countries and discussing the possible strategies for imparting impetus to the principles of ethics and responsibilities
- Building a network on individuals, organizations, jurists, human rights defenders, academics having shared concern over the applicability and enforceability of ethics and responsibilities in public life
- Drawing a plan of action for comprehensive interventions built on the sound foundation of consensus building and networking at international level
- Awareness generation and sensitization of policy makers and other stakeholders on the need for making ethics and responsibilities legally enforceable
- Contributing to the evolution of international legal reference text on responsibility

Fundamental Duties: Need for responsible citizenship: The idea of duty is a very much close to and in compliance with the concepts of ethics and responsibilities and its most vigorous expression could be seen in the Indian Constitution. The inclusion of duties in the Constitutions, other than India and other South Asian countries, can also be found in some other constitutions, primarily, the constitutions of Japan, Yugoslavia, and Republic of China. The Constitution of erstwhile Soviet Union (USSR) also contained fundamental duties.

For an understanding of the legal stature of 'responsibilities,' studying the constitutions of the countries is mandatory. In addition to the constitutions of these countries, the background and the context in which these constitutions evolved will give an understanding of the nature of society and the laws prevalent. Responsibilities in this regards is studied from the viewpoint of the provisions in the constitutions and the laws concerning the vulnerable groups that are prevailing in these countries. Vulnerable groups are sections of population which are not resilient to distress or conflict situations. These include women, children, disabled people and traditional discriminated groups. Owing to their vulnerabilities they are deprived of basic rights which include access to health, education, political participation, freedom of choice etc.

Geographical Scope: Although it would have been ideal to look at a number of countries across the globe to examine the legal frameworks from the lens of responsibilities and ethics, given the limitations in terms of time and resources, it was decided to initially start with the South Asian countries which have in a way common and shared socio-political and historical backgrounds as well as similar nature of problems and vulnerabilities. Hence following countries' legal framework is being examined: Afghanistan, Pakistan, India, Nepal, Bhutan, Bangladesh, Sri Lanka and Maldives. South Asian Association for Regional Cooperation (SAARC) provides a framework within which the regional characteristics as well as the country specific contexts can be analyzed.

In addition to that, study of the society and constitutions and their evolution, mapping of the legal framework concerning vulnerable groups, assessment of the nature of vulnerabilities and response of law are forming the conceptual scope of this study.. The notion of corporate social responsibilities along with the vulnerabilities is also one potential area of inquiry given the recent legal developments in this area. As part of the law, the entire legal framework of countries to analyze the extent to which 'responsibilities' are placed as a corollary to rights of individuals.

The South-Asian Context

The idea of a political community cutting across state boundaries for cooperation and integration is not new in international politics. Ever since the modern state system came into being, rather than functioning as self-contained units, the states have always cooperated with each other to deal with various issues of common interest and concern. While earlier such cooperation often took the shape of military alliances to counter potential adversaries, with advancement in global communication and revolution in information technology, more and more states realized the need of greater cooperation and mutual interdependence as a means for global peace and harmony. The South Asian Association for Regional Cooperation (SAARC) is one such community.

While the governments of the South Asian nations have signed up to a number of global instruments that are designed to reduce vulnerability, and have pursued to develop policies and create new legal and institutional mechanisms translation of action on the ground has not been consistent. Specially, the progress has been the weakest in the area of reducing vulnerabilities of deprived sections of the population. There is still a lot to be done before it can be said that the countries in the region are looking into the issues of vulnerability in a systematic and comprehensive manner. There is however a growing recognition that along with the governments, individuals and families along with other members of the society should assist in reducing the vulnerabilities. The adoption of inclusion in the legal framework can go a long way in increasing the visibility of vulnerability.

Defining Vulnerability: Vulnerability is a state of utter powerlessness which leads to devaluation, denial, lack of opportunities and above all is a denial of human dignity. It also means the loss of control over and

access to the productive resources meant that these sections lost all opportunities and lacked necessities essential for dignified human existence. They lost the means of sustaining themselves. They were left without resources and assets. They were forced to the brink of existence, into abject poverty and penury.

The aim of human rights framework has been the protection of those vulnerable to violations of their fundamental human rights. These groups are weak and have traditionally been victims of violations and consequently require special protection for the equal and effective enjoyment of their human rights. There are additional guarantees in instruments and national laws for persons belonging to these groups. In the context of specially South Asia, where the political instability and lack of sound democratic systems the notion and the operation of the concept of 'responsibility' needs to be seen and examined within the context of vulnerabilities in the region. As seen, vulnerability is of obvious prevalence across the entire region due to various reasons which include crisis situations, poverty, under-development, environmental disasters etc. The various vulnerable groups in the region include women, children, people with disabilities and minorities among others.

Responsibilities and the Law: A South Asian Experience

The status of vulnerable groups and the bankruptcy of the current approach primarily based on the identity politics and rights based approach have been the epicenter of the issues that could potentially be addressed through the responsibilities approach, thus making the approach much more relevant to the regional context in South Asia.

An analysis of the constitutionalism reflects that the morals, ethics and the responsibility of state towards its people are at the epicenter of a constitutional governance structure. This understanding of constitutionalism may also help us understand our constitution in this broader sense, that is, not only in the letter of the law but the spirit in which it is written, and with the expectation to be the source for further elaborating and demystifying the law for the larger good. The embodiment of values, principles and ethics that guide the evolution of law has got expression in many aspects of law. As in the case of most of the countries, the constitutions of nearly all the South Asian countries do reflect the motivation that they have drawn from the respective value systems.

Rights and Responsible Citizenship: Rights are rules of interaction between people. They place constraints and obligations upon the actions of the state and individuals or groups. For example, if one has a right to life, this means that others do not have the liberty to kill him or her. Rights are defined as claims of an individual that are essential for the development of his or her own self and that are recognized by society or State. There are various dimensions of the fundamental rights that are based on the notions of responsibilities. First, is the onus that is on the state to protect these rights from any violations, and second, the doctrine of reasonable restrictions that entails that the citizens can enjoy their rights within some reasonable restrictions that are imposed keeping in view the security-requirements of the state. However, the probably the most important dimensions can be derived from the fact that if people are responsible enough to enjoy their rights within the limitations of equally respecting others' rights also, the question of state intervention for protection of these rights will not arise.

All the fundamental rights enumerated in the constitutions, either require people to be responsible enough to not to venture into others' territory of rights or needs the government to be responsible for nurturing such values that are conducive to the enjoyment of rights. To be very precise the concept of human rights gets impetus with the recognition of individual responsibility and the fundamental rights included in the constitution become much more viable and perceptible if they are guided and supported by the concepts of ethics and responsibilities in society at individual and group level.

There is certainly a need and feasibility of addition of some more duties which are really "fundamental" in nature and which are instrumental in the public as well as private life of the citizens. Since the present list should not become exhaustive one. In the wake of development of modern jurisprudence, this is more

necessary to think of some duties as being binding on the citizens in the wake of respect for *individual* liberties as well of *public* or *national* interests. The need and scope to unravel and demystify the duties is immense, which can be attained through further elaborating on the existing duties. Making references to the domain specific duties and responsibilities could potentially make people more accountable to each other.

In fact the enumeration of specific duties within the cluster of duties mentioned in Art 51A can enable accountability and more participation, of the citizens, by creating a sense of obligation, in the national life and thereby to contribute to the development of the nation, since the nature of the present fundamental duties are more in the sense of “public” interest, the specifications and clarity in the duties could generate a sense of mutual responsibilities and contribute towards smooth functioning of the democracy and the democratic institutions. The consonance with the idea of duties and responsibilities leads to the nourishment of the ideals of common good and sustainable development in longer run.

In addition to the commonly included duties across the other South Asian Constitutions such as the preservation and protection of sovereignty, territorial integrity, security and unity of the country, preserve protect and respect environment, culture and heritage of the nation and fostering tolerance, mutual respect and spirit of brotherhood, and respecting the national flag and anthem, the Bhutanese Constitution also includes much lucid provisions that have the potential to be enforced or that are tangible enough from the point of view of their enforceability. A classic example of such responsibility is the following- ‘a person shall not tolerate or participate in acts of injury, torture or killing of another person, terrorism, abuse of women, children or any other person and shall take necessary steps to prevent such acts.’ The duties here go further in defining the human responsibilities by mentioning that ‘a person shall have the responsibility to provide help to the greatest possible extent, to victims of accidents and in times of natural calamity. In addition to that the Bhutanese Constitution also holds people responsible for safeguarding public property and for paying taxes in accordance with the law.

Rights and responsibilities: the correlation: In the modern societies where democracy, although in various forms, is considered as the most accepted form of governance, people are entitled to various rights that are protected against any violations. The actual realization and protection of these rights are most of the time contingent on the fellowship among people and respect for their rights. As argued in the previous section, the rights will remain mere entitlements to be protected by the intervention of the enforcement agencies unless there is a sense of respect among everyone towards each other’s rights. The articulation and cognizance of this sense needs to be done as responsibilities at various levels– individual, community and state. The extent of fulfillment of the responsibilities at each level determines the enjoyment of the rights by individuals as well as evolution and development of global fellowship across groups and communities. The notion of reasonable restrictions on the rights is the theoretical basis for understanding this correlation. Similar parallels can be drawn in most of the South Asian countries that have included fundamental rights in their respective constitutions. These exceptions have found expressions in with form of restrictions on the exercise of the rights by the citizens or as the responsibilities of the states to facilitate the realization of the rights for the citizens of the country.

Doctrine of Reasonable restrictions: Similar values that aim at balancing the two complementary characteristics of democracies, rights and the responsibilities have been echoed and found place in the constitutions of other South Asian countries as well. An attempt has been made to capture such values in the other South Asian constitutions as well for examples the Preamble of Pakistan’s Constitution says, “the people of Pakistan conscious of their responsibilities, dedicated to the preservation of democracy and inspired by the resolve to protect our national and political unity and solidarity by creating an egalitarian society through a new order. Freedom of assembly: reasonable restrictions imposed by law in the interest of public order. Likewise the freedom of association and form political party is restricted by the obligation of maintaining accounts for the sources of funds in accordance with the law. Similarly the freedom of speech is subjected to any reasonable restrictions imposed by law in the interest of glory of Islam, or integrity, security or defense of Pakistan, friendly relations with foreign states, public order decency or morality...or incitement of an offence.

Exercise of religious faith is to be done within the limitations so that no religious community or denomination is prevented from providing religious instructions.

All the countries across South Asia have incorporated some or the other forms of restrictions on the exercise of the fundamental rights. By virtue of this fact, these rights are not absolute but are contingent on the extent to which it relates to the rights of others. Hence, the operationalization of a person's rights becomes meaningful only if others exercise their rights in a responsible manner. In addition to these restrictions on the citizen/people of the country, the 'responsibilities' also find their way in the facilitative role of the State in the realization of rights. Although, the directive principles of state policy (in Indian Constitution) or the state policy directives as these have been called in others are the major responsibilities of the states, such responsibilities have also been expressed as part of the Fundamental Right. For instance the right to equality can be enjoyed only if the state adheres to the policy of non-discrimination.

Directive Principles of State Policy: The elements of a responsible State: A novel feature of the Indian Constitution is that it contains a chapter on the Directive Principles of State Policy. These principles are in the nature of directives to the government to implement them for establishing social and economic democracy in the country. It embodies important principles like adequate means to livelihood, equal pay for both men and women, distribution of wealth so as to sub serve the common good, free and compulsory primary education, right to work, public assistance in case of old age, unemployment, sickness and disablement, the organization of village Panchayats, special care to the economically back ward sections of the people etc.

Despite the inclusion of such responsibilities for the state within the constitution itself, in most of the South Asian countries, these responsibilities are not enforceable through the court of law. For instance, the constitution of Nepal clearly states: no questions shall be raised in any court as to whether provisions contained in this Part are implemented or not. However, the state shall mobilize or cause to be mobilized the required resources for the implementation of the principles and policies contained in this Part.

Positive Action: Special provisions for vulnerable groups: Another nuanced understanding of the responsibilities in the Constitutions is drawn from the provision of affirmative action/positive action with particular regard to the vulnerable groups. As mentioned the rights of the individuals are limited by the restrictions imposed so that the rights of others could be protected and there is no conflict between the rights of individuals and groups. Affirmative action goes beyond this need of ensuring this balance by seeking special privileges for the vulnerable groups. Such special measures are carried out on the behest of the individuals' and collective responsibility towards the vulnerable groups.

A fine expression of these collective responsibilities is very much present within the constitutional frameworks of the South Asian countries and in their respective laws. Right to equality presents a classic example that has been facilitated by the states in most of the South Asian countries by two means— first, non-discrimination, and second, special provisions for the vulnerable groups. For instance the constitution of India creates an enabling environment for the special provisions that can be made by law, subordinate legislation or the executive action, for the advancement of the women, children or disabled persons. Likewise the Nepalese constitution asserts that the right to equality that includes the right to equal opportunities and treatment provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of the interests of women, Dalit, indigenous ethnic tribes, Madhesi, or peasants, laborers or those who belong to a class which is economically, socially or culturally backward and children, the aged, disabled and those who are physically or mentally incapacitated.

There are multiple windows of analysis of the legal framework that can be enabled through the lens of ethics and responsibilities and there is a range of means to argue for adherence to these concepts to if, not only the ideals and values but also the tangible rights, are to be enjoyed and realized by people. The Constitution as the supreme law of the land, not only expect the State to be responsible for the overall wellbeing of its people, but there is also an anticipation from the citizens to be respectful of others' rights. It includes several

safeguards to curtail the absolute authority of the state and also imposes reasonable restrictions on the individual freedoms to ensure that the freedoms and rights could be enjoyed equally and in just manner.

Mapping of the legal framework protecting vulnerable groups:

Women: Having women's rights constitutionally entrenched is an important step towards ensuring that States eliminate gender-based discrimination and advance women's rights.

Constitutional remedies can be a powerful legal intervention to address vulnerabilities. As a basic law, the Constitution can have normative value in setting standards and sensitizing the community. However, this requires the Constitution to have those provisions in place which enable this. Judicial interpretation of constitutional provisions can draw on international human rights standards and particularly conventions such as CEDAW and CRC, thus facilitating the transformation of domestic law in harmony with the obligations undertaken by ratifying multilateral human rights treaties. The jurisprudence thus created can be used in legal education to lawyers, judges and other professionals so that these standards become a familiar dimension of domestic law rather than international law. This can further encourage the community to take steps.

The concept of a legal action in the courts to enforce fundamental rights is an important legal remedy that can provide substantive relief, however legal intervention alone cannot address problems. Laws should establish duties and responsibilities along with providing for rights. The legal system of any country consists of constitutional provisions and substantive and procedural laws enacted by legislative or administrative authorities. The Constitution and substantive laws set the normative framework; procedural laws and constitutional remedies facilitate enforcement. The constitutional, substantive and procedural laws in South Asia do not adequately establish the 'responsibility' quotient in their legal frameworks. A look into the provisions of the Constitutions and laws establishes the same.

A reading of the constitutional provisions establishes that in all the countries the constitutional framework is based on a rights based approach in which there are two stakeholder groups. First are the rights holders and second are the duty bearers who are mainly the institutions obligated to fulfill the holders' rights. The rights based approach only aims at strengthening the capacity of the duty bearers and empower the rights holders. While this approach works for development, it doesn't work for enforcement of human rights especially of the vulnerable groups because in this case, it is the responsibility of the entire community, family and individual to ensure its enforcement. This approach has narrowed down the participation of the basic units of society such as the community, family and individual. A certain amount of responsibility is cast outside the State only in the following three instances: Article 34 of the Maldives Constitution which states that the family, being the natural and fundamental unit of society, is entitled to special protection by society and the State; Article 8 of the Constitution of Bhutan which states that a person shall not tolerate or participate in acts of injury, torture or killing of another person, terrorism, abuse of women, children or any other person and shall take necessary steps to prevent such acts; and Article 51A(e) of the Indian Constitution which declares that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women.

Apart from provisions in the Constitution, legislations have been passed to protect the interests of vulnerable groups. These laws deal with specific areas of vulnerability and establish institutional support systems as well as mechanisms for redress in case of violation of rights. The law making authorities in South Asian countries have enacted laws to specially take care of vulnerable persons establishing responsibility on the State and its institutions to take care of and protect their needs and interests. The laws made in these countries follow the same pattern as the Constitution except for a few legislations which place responsibilities on entities outside the State and which are in the immediate environment of the vulnerable groups, in this case being women. However, there are several instances where laws are still very repressive against women and legally place restrictions on women. For example, in Pakistan, the Law of Evidence, 1984 states that the value of the women's testimony should be considered only half of a man's even in criminal matters. Similarly, *the Pakistan Citizenship Act, 1951* guarantees citizenship by descent only through the father. A 2009 law in Afghanistan denies women the right to leave their homes except for 'legitimate' purposes;

forbids women from working or receiving education without their husbands' express permission; explicitly permits marital rape; diminishes the right of mothers to be their children's guardians in the event of a divorce; and makes it impossible for wives to inherit houses and land from their husbands even though husbands may inherit immovable property from their wives. Further, as recently as in 2013 the Maldives convicted 15 year old girl who was a rape victim to 100 lashes after she was raped by her stepfather.

On the other extreme is a country like Bhutan which does not have any specific legislation dealing with women. This is because the country believes in the general equality of men and women being influenced by Buddhist traditions and values and hence men and women are seen as equals.

There are many progressive laws preventing discrimination of women in other countries. Most of them have adopted the rights based approach while there are a few provisions incorporating the responsibilities approach as well. However they are not clearly defined as 'ethical responsibilities' but are institutional mechanisms put in place by law to prevent discrimination.

To place ethical responsibilities on individual members, communities and societies, by the legal framework as seen above happens to a case of rarity. Most of the laws completely rely on the state and state based mechanisms to address vulnerabilities. This approach can help only to the extent of addressing the legal rights of women. For example, the laws can prosecute a man who has committed rape against a woman. However, to address the issue of rape as a socio-legal phenomenon, it is pertinent that responsibilities are placed on the family, educational institutions, society and individual members to bring in an attitude change in the perception of woman and crimes against woman. Such initiatives can go a long way in addressing the vulnerabilities against woman. Further, when such responsibilities are incorporated in the legal frameworks, the vulnerabilities may be addressed in a more effective manner.

Children

Child welfare is a very significant aspect for the welfare of the entire community as a community's growth and development depends on the health and well-being of its children. Children are a supremely important asset and the growth of a nation depends on its children's growth and development. There has been a growing awareness among the people of South Asia in regard to the rights of child. Children need special protection because of their vulnerable age and physique, mental immaturity and inability to look after themselves. This consciousness is reflected in the international community as well with the adoption of various treaties concerning children. The major international conventions protecting the rights of child are the Convention on Rights of Child, Optional Protocol to the Convention on Rights of Child on the Involvement of Children in Armed Conflicts, and Convention concerning the Prohibitions and Immediate Action for Eliminating of the Worst Forms of Child Labor.

The Convention on Rights of Child (CRC) came into force on September 2nd 1990. All the South Asian countries have ratified the Convention and are hence bound by its provisions. It requires the states to act in the best interests of the child which is different from the traditional view where children were treated as possessions. Article 3 of the Convention states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Article 3 further states that State Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and to this end shall take all appropriate legislative and administrative measures. Thus it casts both judicial and public involvement in monitoring the rights of the child. The Convention strikes a balance between state and parental responsibility and child rights. Despite the fact that the family is perceived as the most important unit of society, it is also true that families are under stress due to various reasons. Under such circumstances, families must be supported by the State and the community must be able to intervene when the family is a dysfunctional unit. The Convention tries to maintain this balance and maintaining such a balance is important for South Asia as well. The consciousness is reflected in the Constitutions of South

Asian countries and every country has also adopted measures designed to protect children against neglect, cruelty, exploitation and to provide equal opportunities to children for development.

The provisions in the Constitutions indicate the realization of the South Asian countries of the need for protection of children. However, most of them are directed only at the State. Very few provisions have espoused responsibility in their scope. Protection of family is an important provision as it has an impact on the children. But other than that only two provisions place a responsibility outside the state apparatus on the protection of children: Firstly, Article 8(5) of Bhutan's Constitution which states that a person shall not tolerate or participate in acts of injury, torture or killing of another person, terrorism, abuse of women, children or any other persons and shall take necessary steps to prevent such acts; and secondly, Article 51A(k) of the Indian Constitution which declares that it shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or ward between the age of six and fourteen years.

Laws have placed responsibility in the interests of children in South Asian countries. The *Civil Code of 1977* of Afghanistan in Article 257 states that the father shall be bound to pay for the maintenance of his son who is attaining majority age but is poor and has not ability to work. He shall also provide for the maintenance of his daughter, who has attained the age of majority but is poor, until she gets married.

In Bangladesh, the *Children Act, 1974* is the principal law that provides for the care, protection and treatment of children. It specifies the empowerment of children as its first guiding principle and its main objectives are to ensure children's protection and treatment. It imposes various duties and obligations upon the state mechanisms. For example, it states that juvenile courts are to be housed in a building or room different from that in which the ordinary sittings of the Court are held. It also states that police stations are to grant bail to children and the police are to be responsible for keeping children in a safe place and to inform the parents. Also probation officers are to work in the best interests of the child. They have to supervise children in probation, support rehabilitation and rescue children from harmful situations and escort them to the juvenile court. But these responsibilities are only place on state mechanisms and no duty is cast on individual members of the public, or community which is the lacuna in the law.

In Bhutan, the *Child Care and Protection Act of 2011* has taken a major step forward in placing responsibility on the community, educational institutions, media and family in the protection of children's interests. Section 26 of the Act states that education institution shall care for and protect the child through, among others, the following measures: Work with families and communities to promote understanding about children; enhance the academic and social image of children; rehabilitate children in difficult circumstances and children in conflict with the law; provide continuing education to children who have dropped out of schools, children in difficult circumstances and children in conflict with the law; and equip children with information and skills to deal with personal safety.

Section 27 of the Act states that the mass media shall assist in the promotion of child rights and responsibilities and prevention of offences committed by children through positive publication. Section 28 states that the media shall have the duty to maintain professional standards including privacy in reporting and covering cases of children in difficult circumstances and children in conflict with the law. In all publicity concerning children, the best interest of the children shall be taken into consideration. In placing responsibility on the community, Section 31 states that the community may provide or strengthen a wide range of community based support measures for children, including community development centre, recreational facilities and other services to respond to the needs of children. Further, Section 33 states that the community shall endeavor with assistance from the government, to establish special facilities to provide adequate shelter for children who have no home to live in or not able to live at home.

Section 35 of the Act provides that the government shall endeavor to take measures and develop programs to provide families with the opportunity to learn about parental roles and obligations with regard to child development and child care, promoting positive parent-child relationships, sensitizing parents about the problems of children and encouraging their involvement and promote community based activities thereby facilitating the fulfilling of obligations by parents. Section 36 states that families and individuals shall, with the best interest of their children in mind, participate in programs and measures under the Act. This legislation is thus a step in the right direction in identifying responsibilities on non-state entities in the protection of children.

Law on Protection of Rights of Children of Maldives is another example responsibility is placed by law on parents and on general public for the protection of child's interests. The following provisions in the Act deal with duties of the parent: Section 13- Appropriate measures shall be taken to ensure the pre-natal health of the mother and the health of the child after birth; Section 14- Parents shall, to the best of their and within the means available to them, provide the child with food, clothing, shelter and medical care and such other requirements; Section 15- Parents shall, to the best of their ability and within the means available to them, take appropriate measures to ensure the proper upbringing and well being of their children, and to facilitate their education to a reasonable standard and their requisite religious education; Section 16- Particular attention shall be given to prevent acts detrimental to integrity of children and acts of sexual abuse, exploitation and oppression against children. Knowledge of the commission of such an act or suspicion thereof shall promptly be reported to concerned government authority; Section 17- Parents shall, as appropriate to the means available to them, provide medical care to children who are mentally or physically disabled at birth or thereafter, and shall make efforts to provide functional treatment to and rehabilitate such children; Section 18- No child shall, even as a measure of discipline be subjected to punishment which may cause physical injury or which may be detrimental to the health of the child; Section 19- No parent shall, in the event of disagreement or conflict between parents or in the event of separation of parents, act in a manner detrimental to the health, education and conduct of the child; Section 20- In the event of separation of parents, such parents shall provide for the maintenance of the child in accordance with Shari'ah; Section 21- Parents shall pay particular attention to prevent children from marrying before they attain 16 years of age, considering the adverse physical and psychological effects on the of those who marry before attaining the necessary physical and mental maturity or the necessary maturity for bearing the responsibility of a parent. Further, parents shall, when warranted, advise their children on the adverse effects of marriage before attaining 16 years of age and shall discourage such marriages; Section 22- Parents shall take measures within their power to prevent their children from abusing narcotic drugs. Parents shall also take measures to prevent their children from smoking; Section 23- Parents shall comply with guidance given by Government authorities concerning the health, safety and education of children and other measures relating to children.

Duties of the general public are provided in Chapter III as follows: Section 24- All the children shall be treated equally and humanely and preference must be given to children in the provision of various services. Further, protection and assistance shall be given to children and expectant mothers during land, sea and air travel in the general pursuits of the community. Children under the age of 12 years shall be given special concession on land, sea, air and transportation fares; Section 25- No persons shall commit an act that is detrimental to the integrity of children, nor shall any person commit an act of sexual abuse, exploitation or oppression against the child. Knowledge of the commission of such an act or suspicion thereof shall promptly be reported to the concerned Government authority; Section 26- No child shall be require to perform any work which is incompatible with the age, health, and physical strength of the child. Further, no child shall be required to perform any work that may interfere with the child's education or may adversely influence the morals or behavior of the child; Section 27- No child below the age of 14 shall be employed for remuneration. Where a child who has attained the age of 14 years is employed for remuneration, such child shall be assigned work compatible with the child's age and health, and shall be paid reasonable remuneration for the work performed and shall be provided medical care for injuries caused in the course of such employment.

The Judiciary has also played a role in protection of interests of the child. It has intervened and has directed the government in various instances to take necessary measures to protect child's interest. In Bangladesh, the Supreme Court of Bangladesh passed a significant judgment against the death sentence of a child. The Court in the case also directed that, let a copy of this judgment be sent to the Ministry of Law, Justice and Parliamentary Affairs for recommending legislation in line with the views expressed in the judgment. Similarly, the Chief Metropolitan Magistrate's Court in Dhaka applied the provisions of the Children Act, 1974 in relation to parental responsibility. The Court issued a show cause notice to the parent of a victim child as to why they should not be charged for their negligence towards their child.

Minorities

There has been continuing social discrimination against minorities in South Asian countries. In Afghanistan, this includes restrictions on religious freedoms of missionaries and social discrimination against the Hazara Shi'as, who have been discriminated against over a long period has continued. In Bangladesh, Hindu minority are often attacked. In Bhutan, the primary minority ethnic Nepalese continue to claim that they have suffered from forced expulsions and non-rehabilitation in their native lands, and discrimination in civil service and public-sector employment which are rejected by the government. In India, social segregation of dalits and tribals is a continuing phenomenon. In Nepal, which has been dominated traditionally by Brahmins and Chhettris, the language and culture projected from the centre have been those of the Hindu populations of the hill and Kathmandu valley regions. The hill peoples who speak Tibeto-Burman languages have been under-represented in government, while the Terai populations in the south mainly Hindus and Hindi-speakers have also felt themselves to be poorly served in terms of the distribution of public resources. Similarly, in Maldives people are predominantly followers of Sunni Islam, though there is a small community of Shi'a descendants of Indian origin. While not given official recognition, Maldives also has small populations of Hindus and Buddhists. Religious freedoms are substantially curtailed, with Sunni Islam as the only officially recognized religion. Maldives applies the strict version of Sharia. In Sri Lanka, minorities include the Sri Lankan Tamils, Indian Tamils, Muslims, Vedddhas and the Burghers.

Constitution of South Asian countries such as India contains provisions protecting the interests of minorities but they do not establish responsibilities on the individual or community as such. They are in the nature of provision of rights by the State and state based institutions. In the Indian Constitution, Article 29 provides for the protection of interests of minorities- It provides for the right of any section of the citizens to conserve its distinct language, script or culture; admission to any citizen into any educational institution maintained by the State or receiving aid out of State funds cannot be denied on grounds of religion, race, caste, or language; Article 30 provides for the right of minorities to establish and administer educational institutions- It states: there is a right of all religious and linguistic minorities to establish and administer educational institutions of their choice; the compensation amount fixed by the state for the compulsory acquisition of any property of a minority educational institution should not restrict or abrogate the fundamental right guaranteed to minorities, whether based on religion or language; freedom of minority managed educational institutions from discrimination in the matter of receiving aid from the State. However, in the non-justiciable fundamental duties, the Constitution of India in Article 51A(e) states that it shall be the duty of every citizen to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.

Caste based abuse is an age old component of the Indian society. Certain communities in the country suffer from extreme social, economic and educational backwardness and are subject to persistent abuse and discrimination. Certain historical factors combined with other factors such as the practice of untouchability and geographical isolation had led to the growing backwardness of such communities. The Constitution makers acknowledged this fact and addressed the need for providing special consideration to such communities in order to safeguard their interests and to speed up their socio-economic development. These oppressed communities were notified as the Scheduled Castes and Scheduled Tribes. Article 341 of the Constitution states that the President may specify the castes that may be the Scheduled Castes. This is

done after examining the extent of backwardness of a caste, group or tribe, and by issuing a public notification. Similarly, Article 342 states that the President may by public notification specify the tribes or tribal communities that may be the Scheduled Tribes.

The Constitution of India contains the following provisions for the protection and promotion of the interests of SC and ST: Article 15 states that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. This provision is in consonance with the spirit of non-discrimination which is the underlying principle of many international human rights conventions. However, clause 4 of the Article substantiates that that above said shall not prevent the State from making any special provision for the advancement of the socially and educationally backward classes or for the SC and ST. Article 16 states that there shall be equality of opportunity in matters of public employment without discrimination on grounds of religion, race, caste, sex, descent, place of birth, or residence. Article 17 states untouchability is abolished and its practice in any form is forbidden.

Persons with Disabilities: People with disabilities are among the poorest and most vulnerable. Disability includes a number of functional limitations that occurs in populations. People may be disabled physically, intellectually or due to sensory impairment, medical conditions or mental illness. As per the estimates of the United Nations Organization, there are 500 million persons with disabilities in the World today. This number is on a rise due to causes such as war and the consequential destruction, unhealthy living conditions, and an absence of knowledge about disability and its causes and prevention.

Majority of the disabled people live in less developed countries where provision of healthcare is insufficient. Also, poverty and disability are inter-related to the extent that the risk of disability is greater for a family that lives in poverty. Apart from the physical or mental disability, disabled people also suffer from societal discrimination which is based on ignorance and prejudice. Further, opportunities are denied to them because of lack of access to essential services.

In the recent decades, efforts have been made by the countries to address the concerns of people with disabilities through legal interventions. However, these are in the nature of providing state support through institutions and mechanisms. They do not establish the role and responsibilities of the individual, family or the community in addressing the vulnerability of disabled persons except rarely.

The Preamble to the Convention on the Rights of Persons with Disabilities recognizes the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, to enable persons with disabilities to fully enjoy all human rights and fundamental freedoms. It further stipulates that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redress the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries.

In Nepal, the *Disabled Persons Protection and Welfare Act* was passed way back in 1982. In section 8(4) of the Act, it states that a factory which appoints more than 25 labors may be so required that it should appoint the disabled persons in a number not less than five person of the total number of the labors to the appropriate works, to the extent available, on the basis of their physical capability, training, qualifications and experience. Such labor shall receive such remuneration as is equal to that payable to other labors. Their terms of service and career development opportunities shall also be the same, as are of the labors. Further, section 11 states that the family member, guardians of or heir to a disabled person shall take care of and maintain him. This Act has placed responsibility on entities such as the factory and the family members and guardians thereby shifting from a purely rights based to a slightly responsibility oriented approach.

Provisions of the laws in South Asian nations indicate that responsibilities have not been adequately identified except in the case of the law in Nepal which identifies that of the factory, family and the guardian. This is a crucial void in the laws of these nations as the persons with disabilities require the utmost support and attention from their immediate environment which includes the family, community and individual

members of the society. Identifying their responsibility in the constitutional and legal frameworks is crucial to address even the survival needs of the millions of persons who suffer from disabilities and further for their active participation and contribution to the society.

PROTECTION OF ENVIRONMENT: In the last few decades, rapid scientific and technological advancements have taken a toll on the environment. Massive repercussions in the form of degradation of ecological balances are being witnessed which is a cause of worry to mankind. The need to protect the environment is so imperative for the survival of future generations, as well as other life forms that, the right to environment has emerged as a human right. The global community expressed major concern over environmental protection for the first time in the *United Nations Conference on Human Environment* which was held at Stockholm in Sweden in June 1972. The *Stockholm Declaration* was passed containing 26 principles concerning the environment and is considered to be the Magna Carta of environment protection and sustainable development. Principle 1 of the Declaration essentially states that man has the fundamental right to freedom, equality and adequate conditions of life in an *environment of quality* that permits a life of dignity and well-being; and man bears a “solemn responsibility” to protect and improve the environment for the present and future generations.

A CASE FOR CORPORATE SOCIAL RESPONSIBILITY: CSR operates with the principles of sustainability, accountability and transparency for the process of recognition of responsibility. Sustainability is concerned with the effect the action taken in the present has upon the options available in the future. Accountability is concerned with an organization recognizing that its actions affect the external environment, and therefore assuming responsibility for the effects of its actions. Transparency means that the external impact of the actions of the organization can be ascertained from its reporting and its most significant facts are not disguised. Thus all the effects of the actions of the organization, including external impacts, should be apparent to all from using the information provided by the organization’s reporting mechanisms. Transparency is particularly important to users of such information.

However, in recent times, there has been a lot of discussion on how Corporate Social Responsibility may be redefined-Its legal obligations, its social commitments and its duty vis-à-vis ecological and environmental protection. The question is whether the role of the business organizations is confined to creating wealth for their owners, or is it more inclusive, embracing the well-being of a wider spectrum of stakeholders. Doubtless, the 21st century demands a new business economics, which warrants CSR, both inside and outside the organization. In other words, business corporations are obliged to subscribe in thought, word, and deed to the long-term sustainability of this planet. All too often, leadership is still thinks in purely economic terms to maximize profit. There is still far too little focus on the moral character of managerial action. What is needed is a type of leadership that is motivated by the moral imperative of respecting fellow human beings and seeing people not as a means, but as an end in them.

Conclusions

Identifying responsibilities in laws is essential to address most of the human rights issues as they directly deal with people and the societies they live in. Issues of crucial importance such as protection of environment, prevention of discrimination against women, protection of children’s rights etc., require an active participation from the individual member, family, community and society as a whole along with the processes of law. This is particularly true for less developed countries such as the South Asian nations which have the chronic problems of poverty, starvation, unemployment and extreme human rights abuses prevalent on a large scale as well as a complex social milieu which in many cases reinforce the age old cultural practices and social beliefs that maintain the vulnerabilities.

Identification and articulation of responsibilities in the constitutional, substantive and procedural laws would set the normative framework and facilitate enforcement. However, this is the crucial gap in the prevailing rights based approach. The rights based approach holds the state responsible for the development spectrum and leaves out the entire potential of the crucial units of society such as the individual, the family and the

community. Realizing that the rights based approach has not been able to address the issues especially of vulnerable groups such as women, children, persons with disabilities and minorities, there was a need to identify the extent to which responsibilities approach have been adopted. As seen, the legal frameworks of the countries identified for the study do not adequately place responsibilities. This lacuna is even found in their Constitutions. The void thus created which is expected to be filled by the rights approach has not been able to address the issues. It is therefore very significant to identify responsibilities within legal frameworks.

Quality of governance is one of the central factors which affects the delivery of services and eventually address vulnerabilities. Citizens along with the state institutions should have a role to play in governance which takes its roots in the laws. Through such participation, citizens and communities will also have the potential to influence policies and also demand transparency and accountability. Accountability which is at the heart of democratic governance is very crucial to all aspects of human development as it contributes to ensuring the interest of the marginalized and vulnerable groups of the society.

Along with placing of responsibilities in the laws, mechanisms should be created by the State to facilitate the discharge of such responsibilities. This would truly enable persons to perform the obligations and responsibilities when needed. In today's world, use of information and communication technologies in governance has come as a boon. The potential of e-governance and m-governance could be explored to create mechanisms by which persons are able to discharge their responsibilities. Further, access to information and awareness contributes to the participation in governance. For example, by the initiative of the State, a child helpline may be established. However, it can be of effective help only if the information about the role, functions and the number of the helpline is disseminated to people. Also, penetration of education and technology must be broad based addressing all groups of the society.

Governance and addressing of vulnerabilities in the legal frameworks has attained a management tinge since the last two decades. Performance, delivery, efficiency and effectiveness are corollary to the success of government run institutions in today's world which is mostly corporatized. For the success of its functions, it is pertinent that the government indulges citizen participation by incorporating the responsibilities based approach to its constitutional, substantive and procedural laws and also facilitate the performance of such obligations.

The discussion so far on the nature and extent of the 'responsibilities' within the legal framework in South Asia exposes the inadequacy of the adherence to only a 'rights based approach'. Prevailing and ever increasing vulnerabilities stand testimony to the fact that in the absence of creation of responsibilities, rights cannot be enjoyed in their totality and true spirits. Hence, the responsibilities approach must be seen as complementary to the rights based approach.

While such realisation serves as the conceptual and philosophical basis for the inclusion of rights based approach with the legal framework, the need to position such responsibilities as juxtaposed to rights and entitlements in a manner that lays equal emphasis on both and responsibilities do not get trivialized either in the garb of abstract enumeration or by way of the issues emanating from their 'justiciability' quotient. Further, for such responsibilities to be enforceable and contributing towards protection of vulnerable groups' rights, it is also important to identify and establish the institutions for the same as well as fix such responsibilities at individual, family, community level as well as at the level of the state, while being also conscious of such responsibilities to be in proportion with the means and authority.

Challenges in imparting legal impetus to responsibilities: A mapping of the responsibility as a quotient embedded in the legal framework particularly in the context of ensuring protection of rights for the vulnerable groups, establishes the fact that 'responsibility' although is recognised as a virtue, has not been reflected in the legal provisions very evidently. Barring a couple of exception, responsibilities at individual, family, community and state level, do not have legal enforceability attached to it. This can be attributed to the way responsibilities have finally found place in the legal framework. Most of the time, the responsibilities

are included only in an abstract form and not very clearly articulated and such ambiguity fails to contribute towards enforceability. Another important factor is absence of the provisions that could 'fix' responsibilities for various levels – individuals, family, community and the state. In the lack of clarity as to who is responsible for what, the responsibilities render meaningless.

However, the most common and widely prevalent issue that prevents the responsibilities being enforced, especially in the context of South Asia is lack of any redressal or penal action in case of non-adherence to responsible behavior. For example, the Right of children to Free and compulsory Education act 2009 in India holds parents responsible for ensuring that the children go to schools, however, does not offer any mechanism to reprimand those who fail to do that.

Further Research Areas to be Explored: While the reports has delved into a range of issues while attempting to understand the nature, extent and ways in which the 'responsibility' approach has found place in the existing legal framework of South Asian nations, the study done so far has in fact opened up many more areas of inquiry in this direction that are needed to be further explored to capture a holistic picture of nature of responsibilities in the legal regimen.

In the present context, first and foremost is the need to further explore the role of law and delve into various other dimensions of the law and its limitations to ensure and build responsible citizenship. On the contrary there are several provisions that turn out to be disempowering for the vulnerable groups. There is a need to map and identify such provision and suggest ways and means to combat them through responsibilities approach. This would also entail identification of the agencies and mechanisms that could play a major role in realizing the potential of responsibilities within legal framework. Such an endeavour would also take into account the present and prospective role of the institutions that are entrusted with such roles.

Further, in order comprehend the evolution of the present systems in its political and socio cultural environment, it is required to trace the initiatives taken by the civil society towards the protection of vulnerable groups while observing the tenets of responsibility approach, either consciously or otherwise.

Another area of inquiry that is worth exploring is the role of judiciary and its various institutions in the areas of articulating and fixing responsibilities and also holding various actors responsible for certain actions or non-actions as the case may be. In India and in other parts of South Asia and the world the independent judiciaries have pronounced several decisions that have had larger impact on the legal discourse and a mapping and understanding of any such pronouncements that could potentially add the legal impetus to responsibilities is critical.

In addition to the judiciary, political processes and the legal discourses have also got informed and influenced by the party politics in South Asia and other regions across the globe. Many political parties have played pivotal role in initiating the demands for certain legislations either through supporting the campaigns by civil society or by including such demands in the election manifestoes. In fact some of the legislations that ensure certain rights to the vulnerable groups and also hold either the governments and the corresponding institutions responsible, can entirely be attributed to the initiatives taken on the part of certain political parties. National Rural Employment Guarantee Act and the National Food Security Act 2013 for instance are primarily the initiatives of the United Progressive Alliance governments led by the Congress party in India. An extensive mapping of such initiatives could lead to headway in exploring the role of political class in making responsibilities much more tangible.

In addition to the various dimensions, evolution and the role of a range if institutions, there are few other aspects especially in the context of the globalized world that are yet to be explored and analysed especially with a view to establish responsibilities. Climate change is such an issue which is being discussed widely, however, there is huge amount of ambiguity as to 'whose responsibility is it'. Such an exploration is

not only critical but urgent as well especially considering the fate of the island countries in the wake of global warming and other such crises.

The operationalization and much more pragmatic use of the principles of ethics and responsibilities can found to be in various professional codes of ethics ranging from medicine lawyering, business or any other. An assessment of the degree of binding nature and their implications for the professional sphere of such codes, could facilitate some insights into how responsibilities have reflected and influenced these professions and what are the key principles that could potentially impart stimulus to responsibilities in the real world of professional class.

Another area of strategic importance is the issue of theorizing the notion of corporate social responsibility, and critiquing its understanding that is limited to setting aside a fraction of profit by the corporate houses. It is a known fact CSR starts from within for the industry and must be reflected in the personnel policies of the corporate houses to start with and must go beyond towards ensuring sustainable livelihoods for the community it exists with. Experience in countries like India has shown that this notion has been included in the legal frameworks in its watered down versions with little or no significance for the society and community.

Further discussions are also required as part of the current process that could led to the identification of key issues for advocacy and campaigning with the state actors as well as at the international level towards the creation of a responsible society. As a logical progression and an organic part of the whole process, it is important to further discuss and disseminate the key findings and concerns with the wider group of stakeholders. It is equally important to expand the geographical scope of the study by having other regions and country also being studied using the similar methodology. The will help in universalizing the outcome and also factoring in various dimensions of the issues from various parts of the world. Such expansion of the scope would also contribute towards the exploration of the ways in which the whole endeavour could contribute towards the idea of the Universal Declaration of Human Responsibilities (UDHR) at international level and further creation and development of international legal text on the issue.