



DESIGNING REGIONAL HUMAN RIGHTS LAW IN SOUTH ASIA

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Introduction

The article 56 of UN Charter imposed obligation upon its member states to take joint or separate action, in co-operation with the organization, for the achievement of universal respect for, and observance of, Human Rightsⁱ.

The idea of regional arrangements for promotion and protection of human rights has been gained recognition since the adoption of the Universal Declaration of Human Rights, 1948. In 1993, the Vienna Declaration and Program of Action emphasized the need “to consider the possibility of establishing regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist”.

Today, with one-fifth of the world’s population, the countries of South Asia face formidable challenges resulting from poverty, under-development, and conflict within and among themselves. Their low economic production, unemployment and population pressure are not helped by historic exploitation and by other adverse legacies. In addition, deep-rooted divisions and animosities throughout the sub region make any commonality across nations impossible, and the whole sub region has to grapple with gross violations of human rights. Many regional human rights institutions are functions well. There is no regional human rights law or declaration in South Asia. It is appropriate to explore the concept of regional human rights law in South Asia.

Regional Institutions

The European Convention on Human Rights was opened for signature in Rome on 4 November, 1950 and entered into force on 3 September 1953. The Convention created both a European Commission and a European Court of Human Rights (ECHR).

The adoption of the African Charter on Human and Peoples’ Rights in 1981 was the beginning of a new era in the field of human rights in Africa. It entered into force on 21 October 1986ⁱⁱ. The African Charter created the African Commission on Human and Peoples’ Rights.

The American Convention on Human Rights, 1969, entered into force on 18 July, 1978 and, as of 9 April, 2002, had 24 States parties, following the denunciation of the treaty by Trinidad and Tobago on 26 May, 1998. The Convention reinforced the Inter-American Commission on Human Rights, which since 1960 had existed as “an autonomous entity of the Organization of American States”.

The League of Arab States founded in March, 1945. The idea of establishing an Arab Commission on Human Rights was mooted at an International Conference on Human Rights in Tehran in April-May, 1968. On 29 October, 2009 the Association of South East Asian Nations (ASEAN) inaugurated the ASEAN Intergovernmental Commission on Human Rights (AICHR)ⁱⁱⁱ. A sub regional instrument could be regarded as an appropriate complement to the human rights instruments of the United Nations. Regional human rights mechanisms are already established in the Americas, Europe, and Africa and most recently in the Arab States. But South Asia, one of the remaining major geographic areas in the world, has no human rights mechanism of its own.

Regional human rights systems strengthen the protection and enjoyment of human rights by taking into account regional considerations, such as shared regional customs, values, culture, and practices. When domestic institutions fail to uphold the law, or when they themselves are the violators of the law, it may be possible or necessary to seek redress beyond national boundaries. Regional legal frameworks give violated rights-holders the possibility of bringing their case in front of a regional body, providing that the country in question is part of this framework, and providing that all national remedies have either been exhausted or deemed inefficient.

The regional human rights mechanisms have proven to be more effective and useful in promoting and protecting human rights than the global human rights mechanisms available at the UN (e.g. the Human Rights Committee, the Committee against Torture), because they cannot only be complementary to UN system, but can also reflect regional particularities. Regional human rights regimes are usually justified as essential elements in any successful international human rights system in a diverse, conflicted world^{iv}. It is very essential to proclaim a regional declaration on human rights like the existing regional law on human rights.



South Asia

The Protection of Human Rights Act of India was enacted in the year 1993, which is an Act to provide for the constitution of a National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts for promotion and better protection of human rights.

Human Rights Commission of Sri Lanka Act was come to effect in the year 1996. This is an Act to provide for the establishment of the human rights commission of Sri Lanka; to set out the powers and functions of such commission; and to provide for matters connected therewith or incidental thereto. The Human Rights Commission of Sri Lanka was began operating in September 1997.

An effort to establish a human rights overseer in Bangladesh was initiated in the late nineties. Successive governments tried to launch such a body at the urge of national and international agencies. The public desire to establish such an institution got momentum in 2007. As a result, National Human Rights Commission Ordinance 2007 was promulgated by the Honourable President of Bangladesh with effect from 1st September 2008.

The National Human Rights Commission (NHRC) of Nepal was established on May 26, 2000 under National Human Rights Commission Act of 1997 which provided NHRC the responsibilities to contribute for the protection, promotion and effective implementation of human rights.

Law on the Structure, Duties and Mandate of the AIHRC Law is made pursuant to Article 58 of the Constitution of Afghanistan; and Resolution 134 of 20 December 1993 of the United Nations General Assembly, in order to monitor the observance of human rights, to promote and protect human rights and to regulate the affairs related to the structure, duties, powers and method of work of the Afghanistan Independent Human Rights Commission.

A bill to establish Pakistan's national human rights institution was passed by the National Assembly and the Senate in 2012. Under the legislation, the NCHR will have the power to intervene in any proceedings involving alleged violations of human rights, to visit jails nationwide and to appoint special investigation teams of officers from police and other law enforcement agencies.

The Human Rights Commission of the Maldives was established as an independent statutory body by the Human Rights Commission Act 6 of 2006. Its goal is to lead the promotion and protection of human rights set out in the Maldives Constitution, Islamic Shari'ah and regional and international human rights conventions ratified by the Maldives. It also assists and encourages non-governmental organizations in creating awareness and in promoting human rights^v.

Bhutan did not have a National Human Rights Institution. The government of Bhutan had not expressed any intention to establish such a Commission in the future. The National Human Rights Institutions have to take steps to constitute the regional forum of human rights in South Asia.

SAARC

The idea of co-operation in South Asia was discussed in the Asian Relations Conference held in New Delhi on April 1947; the Baguio Conference in the Philippines on May 1950; and the Colombo Powers Conference held in Sri Lanka in April 1954.

In the ending years of the 1970s, the seven inner South Asian nations that Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka agreed upon the creation of a trade bloc and to provide a platform for the people of South Asia to work together in a spirit of friendship, trust and understanding.

The idea of regional cooperation in South Asia was first mooted in May, 1980. After consultations, the foreign secretaries of seven countries (Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka) met for the first time in Colombo in August 1981. This was followed by a committee of the whole in Colombo in August – September, 1981, which identifies five broad areas of regional cooperation.

The foreign ministers of South Asia, at their first meeting in New Delhi in August 1983, adopted the Declaration on South Asian Regional Cooperation and formally launched the integrated programme of action initially in five agreed areas of cooperation namely, agriculture, rural development, telecommunications, meteorology, health and population activities.



The Heads of the States or Governments at their first South Asia summit held in Dhaka on 7-8 December 1985 adopted the Charter formally establishing the South Asian Association for Regional Cooperation (SAARC)^{vi}.

In 2005, Afghanistan began negotiating their accession to SAARC and formally applied for membership on the same year. The issue of Afghanistan joining SAARC generated a great deal of debate in each member state, including concerns about the definition of South Asian identity. The SAARC member states imposed a stipulation for Afghanistan to hold a general election; the non-partisan elections were held in late 2005. Despite initial reluctance and internal debates, Afghanistan joined SAARC as its eighth member state in April 2007.

It may be noted that here, the SAARC reached the following agreements^{vii} and conventions^{viii} for the development of South Asia.

- SAARC Framework Agreement for Energy Cooperation
- Agreement for establishment of SAARC Arbitration Council
- Final Agreement on Avoidance of Double Taxation
- Final Agreement on Customs Matters
- Charter Of SDF 31 July 2008
- Agreement on establishing the SAARC food bank
- Agreement on south Asian Free Trade Area (SAFTA)
- Agreement on the Establishment of South Asian Regional Standards Organization (SARSO)
- Agreement on Avoidance of Double Taxation
- SAARC Convention on Combating and Prevention of Trafficking in Women and Children for Prostitution
- Convention on Promotion of Welfare of Children
- Convention on Mutual Assistance on Criminal Matters, July 2008
- SAARC Convention on Narcotics Drugs,
- SAARC Regional Convention on Suppression of Terrorism,
- Additional Protocol on Terrorism, January 2004

The SAARC has to initiate to make a regional human rights declaration or law on human rights and provide a mechanism for administration of human rights justice.

Dhaka Declaration

The two-day regional seminar, organised by the National Human Rights Commission (NHRC) in Bangladesh, ended on November 18, 2014 with the Dhaka declaration, which is an agreement among the countries, which are members in the South Asian Association of Regional Co-operation, to work towards establishing human rights protection mechanism in the South Asian region. The declaration as follows,

Recalling the struggles and the journey towards ensuring the human rights and dignity of the peoples of South Asia;

Recognising the increasingly key role played by the National Human Rights Institutions in South Asian States towards Institutionalising human rights in the region;

Appreciating the efforts made by National Human Rights Institutions in assisting South Asian States in guaranteeing the commitments made under international human rights treaties and instruments including regional instruments;

Expressing concern over growing challenges faced by South Asia as a region and the fact that human rights violations affect the lives of peoples across borders;

Prioritising issues including trafficking in women, child rights, condition of migrant workers and climate change which shall require concerted and cooperative efforts;

Emphasising that regional problems require regional solutions, which can only be achieved through a common resolve for ensuring that the peoples of South Asia are free from oppression and are able to live a life of dignity to their fullest potential;



Committing to a culture of peace and fraternity among all peoples and States in South Asia and our common goal of working towards ensuring freedom and rights for all;

Being cognizant of the fact that regional human rights mechanisms are functioning and expanding in different parts of the world;

Highlighting the rationale and need for a regional human rights mechanism for South Asia to promote and protect the pluralistic nature of the region;

Resolving to mobilise greater support for the creation of an independent, effective and efficient regional mechanism in South Asia;

Reaffirming the essential role of National Human Rights Institutions, CSOs and human rights defenders in advocating for, establishing and ensuring effectiveness of a South Asia Human Rights Mechanism^{ix};

As part of the Dhaka Resolution, representatives (India's NHRC Chairperson Shri KG Balakrishnan, Maldives' Human Rights Commission President Marayam Azra Ahmed, Nepal's NHRC Commissioner Mohona Ansari, Sri-Lanka's NHRC Secretary Samanthi, and Afghanistan's IHRC Commissioner Ahmad Zia Langari and Chairman, National Human Rights Commission) from the NHRIs of Afghanistan, Bangladesh, India, the Maldives, Nepal and Sri Lanka committed to work towards:

- Amplifying efforts made by civil society in developing discussions relating to the need for a South Asian human rights mechanism;
- Enhancing systematic and close cooperation among National Human Rights Institutions in the region in addressing the common challenges and struggles of the peoples of South Asia;
- Supporting and providing constructive inputs to other National Human Rights Institutions in the region towards better protecting human rights at the domestic level;
- Ensuring fullest cooperation among National Institutions in the region in addressing violations that impact lives across borders;
- Strongly urging the SAARC member States, where there are no National Institutions, to establish National Human Rights Institutions in conformity with Paris Principles and further strengthen existing National Institutions;
- Collectively advocating with SAARC member States to establish a robust South Asia Human Rights Mechanism with a mandate for the protection and promotion of human rights;
- Inclusion of greater deliberations and commitments relating to human rights and the establishment of a regional human rights mechanism at the SAARC conferences and summits; and
- Convening annual consultation of the National Institutions in the Region to strengthen inter-NHRI bond of collaboration and cooperation to promote and protect human rights, and for fulfilling the above objectives^x.

This declaration is a first step towards the formation of regional human rights mechanism in South Asia.

Conclusion

This study makes an attempt to study the regional human rights law in South Asia. The following steps are essential to promote and protect the human rights in South Asia.

- i. The examination of the existing Regional Human Rights Institutions clearly indicates the need of Regional Human Rights Law In South Asia.
- ii. Regional Declaration on Human Rights has to be proclaimed by the Nations of the South Asia and it has to provide the Regional Human Rights Institution for South Asia.
- iii. The study identified that the South Asian Association of Regional cooperation is suitable forum to enact the regional human rights law in South Asia.
- iv. South Asian countries have to initiate the steps to enact the Regional Human Rights Law and establish a Regional Human Rights Institution in SAARC forum.
- v. National Human Rights Institutions in the South Asia, people's forums, political parties, media and intellectuals have to force their national governments to adopt the Regional Human Rights Declaration.



Reference

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- ^{iv} Hidetoshi Hashimoto, Op. Cit., p.1.
- ^v <http://www.asiapacificforum.net/members/associate-members/republic-of-the-maldives>.
- ^{vi} O.P.Goel, *India and SAARC engagements*, Isha Books, Delhi, 2004, p.1-2.
- ^{vii} <http://www.saarc-sec.org/Agreements/69/dt.03-04-2015>.
- ^{viii} <http://www.saarc-sec.org/SAARC-Conventions/63/dt.03-04-2015>.
- ^{ix} http://www.nhrc.org.bd/PDF/Dhaka%20Resolution_English.pdf, dated 21-03-2015.
- ^x <http://www.asiapacificforum.net/news/south-asian-nhris-discuss-regional-human-rights-protection-system>, dated 21-03-2015.