

Addressing South Asian Human Rights Issues: The Need for a Regional Mechanism¹

1. Setting the scene

The South Asian Association for Regional Cooperation (SAARC) was established with a view to enhancing regional cooperation and promoting multilateral social and economic development in the South Asian region. SAARC aims to work based on inter-state trust, cooperation, exchange and collaboration among member states.

Despite having constitutional stipulations to guarantee fundamental freedoms and to promote and protect human rights, South Asian countries have been tainted with gross human rights violations within and beyond their borders. It is noted that SAARC countries have similar human rights concerns which include, among others, shrinking civic space, violation of freedom of expression, impunity, dysfunctional institutions, enforced disappearances, torture, and extrajudicial killing. Gender based violence and discriminatory practices against women in the name of culture and traditions are also prevalent in the region. In addition, there are many issues which have impact beyond national boundaries- trafficking, climate justice, cross-boundary natural resources sharing are a few to mention. The South Asian countries also face criticisms for not fulfilling human rights obligations under international human rights treaties.

It is noted that apart from international human rights mechanisms and bodies, there are some regional human rights mechanisms (European, American and African) which are also playing a predominant role in protecting and promoting human rights. However, SAARC is the only regional organization in the world which does not have a regional human rights mechanism. It is noted that South Asia has enough common features in terms of democracy, rule of law and human rights that deserve to be addressed by a separate regional mechanism and SAARC is considered as the most suitable launch pad.² Though SAARC has reflected concern and respect for the socio-cultural inheritance of South Asia in its Social Charter,³ however, the potentials of SAARC in developing a human rights culture in South Asia remained unexplored.

The aim of this paper is to underscore the necessity of establishing regional human rights mechanism in South Asia. While assessing the feasibility to establish a South Asia regional human rights mechanism, the paper provides a review of human rights situation in the member countries. The paper shall also analyse the on-going efforts towards the establishment of a regional human rights mechanism in South Asia. Finally, the paper shall explore the ways and advocacy strategies to pioneer the movement of formulating a regional human rights system while responding to the pressing challenges.

¹ Ain o Salish Kendra (ASK) and Asian Forum for Human Rights and Development (FORUM-ASIA)

² Shveta Dhaliwal, *Development of South Asian Human Rights Culture: The Role of South Asian Association for Regional Cooperation (SAARC)*, The Indian Journal of Political Science, July - Sept., 2008, Vol. 69, No. 3 (July - Sept., 2008), pp. 565-575.

³ At Twelfth SAARC Summit at Islamabad, on 2-6 January 2004, the Leaders of SAARC countries signed the SAARC Social Charter.

2. Human Rights concerns in South Asia

The law of international human rights is eternal. Human rights are unaffected by changes in territorial control or *de facto* authority. SAARC member-states also have a responsibility to submit periodic reports on the implementation measures to the respective human rights committees being part of their obligations under international human rights instruments. It is mention worthy that except Bhutan, all the states are parties to almost all core international human rights instruments.⁴

Despite ratifying all the core human rights instruments, human rights violations have been a persistent issue in the member states. Though South Asian countries ratified the treaties, in some cases they have made reservations which contradict with the commitment to protect and promote human rights.

Countries also have obligations under customary international law which are often being referred by the judiciary. South Asian countries including India, Sri Lanka, Nepal and Bangladesh claim to be secular states however the reality talks otherwise. Over the years, religious fundamentalism is rising in south Asia which obstructs the growth of secularism in the region.⁵ The declining trends of secular practices create room for political use of religion that leads to religious hatred, communal violence and other human rights violations.

Freedom in the World 2020 Report, published by Freedom House, a U.S.-based watchdog, shows that the citizens of SAARC member-states are largely not free to enjoy their civil and political rights. The report has evaluated the condition of political rights and civil liberties in 210 countries and territories.⁶ The research findings have marked Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka as ‘partly free’ whereas Afghanistan has been identified as ‘not free’ in the global freedom score.

The following part briefly examines the human rights situation, practice, policy and compliance of the eight SAARC member countries to find out the regional human rights reality.

Bangladesh

The Constitution of Bangladesh has also expressly recognised the promotion and protection of human rights under Part III (Fundamental Rights) and Part IV (Fundamental Principles of State Policy). The Constitution of Bangladesh clearly pledges for protection of fundamental human rights and freedoms and respect for the dignity and worth of the human being as a person.⁷ Bangladesh has ratified eight out of nine basic international human rights agreements and four Optional Protocols.⁸ However, Bangladesh, while ratifying CEDAW, made reservation on a few

⁴ The International Covenant on Civil and Political Rights, 1966 (ICCPR); The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR); The Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW); The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT); The Convention on the Rights of the Child, 1989 (CRC); The Elimination of All Forms of Racial Discrimination, 1965 (ICERD); The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (CMW) and Convention on the Rights of Persons with Disabilities, 2006 (CRPD).

⁵ <https://www.thedailystar.net/news/secularism-choking-in-south-asia>

⁶ *Our Issues* (Freedom House, 2021) <<https://freedomhouse.org/issues>> accessed 3 November 2021.

⁷ The Constitution of the People’s Republic of Bangladesh (adopted 4 November 1972, entered into force 16 December 1972) art 11

⁸ Hameeda Hossain, ‘Human Rights in the Nation State’, in Imtiaz Ahmed (eds) *Human Rights in Bangladesh: Past, Present and Future* (The University Press Limited, 2014) 112

provisions including the provisions relating to equal guardianship,⁹ policy measures,¹⁰ equality as to the right to family benefits¹¹ and equal rights and responsibilities during marriage and at its dissolution.¹² Though Bangladesh has withdrawn its reservation on Article 13(a), the remaining reservations, based on religious orthodox norms and utmost compliance of divine religious scripts, still hinders the growth of the empowerment of women by putting women within the perpetual cycle of discrimination. It is observed that though there are special provisions for women and children under the constitution and national laws, there remains huge gap in terms of implementation of laws and policies regarding the special provisions for women and children. The non-compliance of submitting reports to the specialised human rights agencies about the implementation of international instruments is causing adverse impact on the lives of women.

However, it is reported that the concerned authorities have failed to hold the responsible forces accountable for human rights violations including enforced disappearances, torture, and extrajudicial killings.¹³ According to the ASK's statistical report 2020, the number of extra-judicial killing in the last one year is found to be nearly 200. The number of custodial deaths is found to be 34.

Journalists, while playing the role of watchdog, faced challenges during COVID-19. The report by ASK reveals that 233 journalists faced death threat, torture, detention, harassment and violence over the last one year. While the number of detained journalists varied among different institutions, the Daily Star compiled the relevant media reports and found that 38 journalists were arrested between January and October 2020. In addition to journalists, university and college teachers along with other commoners were also harassed for questioning the irregularities of the health care services. The analysis of the Daily Star reveals that the number of cases under the controversial Digital Security Act 2018 increased by almost twice¹⁴ than the previous year. As per ASK report, the number of extra-judicial killing in the last one year is found to be nearly 200. The number of custodial deaths is found to be 34. At least 45 Bangladeshis were either shot dead or tortured to death by the Indian Border Security Force in the border areas in the year of 2020.¹⁵

It is noted that the number concerning alleged enforced disappearance cases is varied as the term enforcement disappearance is not legally recognised in the laws of Bangladesh and the cases of enforced disappearance are mostly amalgamated by the government with the cases of abduction and kidnapping. It is noted that indigenous people in Bangladesh are losing their land and continuously facing assimilation on ancestral land rights which infringes their fundamental rights under different instruments.

It is mention worthy that Bangladesh reflects its utmost commitment under international law while hosting and protecting nearly 1 million Rohingya refugees from neighboring Myanmar. However, the response from international community especially from South Asian countries to resolve the

⁹ Article 16(1)(f) of CEDAW

¹⁰ Article 2 of CEDAW

¹¹ Article 13(a) of CEDAW

¹² Article 16(1)(c) of CEDAW

¹³ Human Rights Watch, World Report 2021: Bangladesh Events of 2020, January 2021, <https://www.hrw.org/world-report/2021/country-chapters/bangladesh>

¹⁴ Number of cases in 2019: 63. Number of cases in first six months of 2020: 111.

¹⁵ Ashif Islam Shaon, '2020 in review: Human rights remain a concern' *Dhaka Tribune* (30 December 2020) <<https://www.dhakatribune.com/bangladesh/2020/12/30/2020-in-review-bangladesh-battered-by-human-rights-violations>> accessed 3 November 2021.

Rohingya crisis is frustrating which also reminds the significance of having a regional mechanism in settling issues like Rohingya. It is noted that Rohingya crisis should not be treated as a concern and threatening issue for Bangladesh only rather the crisis has impacts and implications for the entire region which should be addressed by common efforts and mechanism. A regional mechanism can contribute to hold dialogues with neighbouring countries in order to find effective strategies and pathways to resolve such pressing issue like Rohingya crisis. Such mechanism could also facilitate to ensure the rights of Rohingyas which are being violated despite the efforts of Bangladesh government.

Afghanistan

The humanitarian and human rights crisis is rapidly unfolding in Afghanistan. Almost 16 million Afghans (amounting to one half the people in the country) are facing a dire humanitarian situation since July 2020. With the recent takeover of the government by Taliban, this number is set to increase. The Taliban's repressive rule has exacerbated the human rights situation in conflict-torn Afghanistan, as evidenced by mass civilian deaths, oppression of women, crimes against humanity, and war crimes. As the Taliban has taken over the country, it is feared that their governance will bolster impunity and exacerbate occurrences of human rights violations. Even though Afghanistan is signatory to a number of international human rights instruments, prolonged armed conflicts in Afghanistan has minimised the influence of these instruments on the protection of human rights.

Bhutan

There exist conflicting reports regarding Bhutan's approach to political and civil rights. It is mention worthy that Bhutan has been ranked 65th position in the Press Freedom Index in 2021, which is the highest among South Asian countries. However, it is reported that journalists, bloggers, and writers maintain a high-level of self-censorship in writing and publishing any information pertaining to the royal family.¹⁶ The incidents of threats, intimidation, and defamation lawsuits against journalists and social media activists are also reported.¹⁷ Due to the absence of adequate information, it is difficult to analyse the human rights situation of Bhutan effectively.

Nepal

Nepal's recent past has been filled with political turmoil and instability. The Comprehensive Peace Accord that ended the decade-long armed conflict in November 2006,¹⁸ the Interim Constitution of 2007 and the incumbent Constitution of Nepal 2015 have collectively failed to provide justice to conflict victims who suffered gross human rights violations from State and Maoist forces. This lack of accountability for crimes committed during the war extends to crimes committed in the post-war period as evidenced by the blatant failure to investigate, prosecute, and redress the violations.¹⁹

¹⁶ US Department of State, Bhutan 2020 Human Rights Report (2021), p.6.; 'FREEDOM IN THE WORLD 2020: BHUTAN' *Freedom House* <<https://freedomhouse.org/country/bhutan/freedom-world/2020>> accessed 3 November 2021.

¹⁷ Ibid

¹⁸ 'Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal (Maoist)' (*Peacemaker*, 22 November 2006) <<https://peacemaker.un.org/nepal-comprehensiveagreement2006>, accessed 20 October 2021

¹⁹ HRW, 'No Law, No Justice, No State for Victims' (*Human Rights Watch*, 20 November 2020) <<https://www.hrw.org/report/2020/11/20/no-law-no-justice-no-state-victims/culture-impunity-post-conflict-nepal>> accessed 20 October 2021; 'No law, no justice, no state for victims: The culture of impunity in post-conflict Nepal'

This phenomenon is mirrored in the state of the two transitional justice bodies - the Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons. Six years since its inception, they have failed to address any of the 66,000 registered complaints.²⁰ The extant TRC Act 2014 allows amnesty for many egregious human rights violations, including torture and extrajudicial killings, and has not been amended despite the Supreme Court's verdicts²¹ and repeated calls by national and international rights bodies.²²

India

The promotion and protection of human rights has been expressly recognised under the Indian Constitution as Fundamental Rights (Part III) and Fundamental Principles of State Policy (Part IV). India has also signed/ratified all the nine core international human rights conventions.²³ However, women and children are found to be the constant victims of violence and harassment. The government increasingly harassed, arrested, and prosecuted rights defenders, activists, journalists, students, academics, and others critical of the government or its policies.²⁴ Imposition of discriminatory practices and even attacks are being continued against religious minorities especially against Muslims. As per National Human Rights Commission, 77 deaths in police custody, 1,338 deaths in judicial custody, and 62 alleged extrajudicial killings have been reported in the first 10 months of 2020. India has also been entangled with a good number of cross-border human rights issues like terrorism, human trafficking, border killing, smuggling and dispute over shared natural resources.²⁵

Maldives

Failure of proper portrayal of democracy and rule of law has resulted in gross violations of human rights in Maldives. Fundamental human rights are safeguarded by Chapter II of the Constitution. Despite the constitutional safeguards aimed at ensuring respect for the separation of powers, the independence of judiciary has been marred by the intervention of both the executive and legislative branch and thus creating difficulty in its transition towards democracy and the rule of law.²⁶

<https://reliefweb.int/report/nepal/no-law-no-justice-no-state-victims-culture-impunity-post-conflict-nepal>, accessed 20 October 2021; <https://www.justice.gov/eoir/page/file/1339191/download>, accessed 20 October 2021

²⁰ <https://trialinternational.org/judicial-body/commission-on-inquiry-into-disappearances-nepal/>, accessed 20 October 2021

²¹ In *Suman Adhikari et.al v. the Office of the Prime Minister and Council of Ministers* (26 February 2015), the Supreme Court issued an order of mandamus and a certiorari asking the government to amend the TRC Act 2014 in line with prevailing international law. Following a petition filed by the government request for a review of its order, in April 2020, the Court upheld its ruling and reiterated that the current TRC Act 2014 violates principles of transitional justice.

²² Binod Ghimire, 'Rights groups' statement shows the world is watching Nepal's transitional justice process, experts say' <https://kathmandupost.com/national/2019/11/26/international-human-rights-groups-criticise-politicisation-in-the-transitional-justice-process> accessed 26 October 2021

²³ United Nations Human Rights Office of the High Commissioner, 'Ratification Status for India' <https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN> accessed 3 November 2021

²⁴ <https://www.hrw.org/world-report/2021/country-chapters/india> accessed 3 November 2021

²⁵ Shveta Dhaliwal, *Human Rights Mechanism in South Asia*, (Routledge, 2017) 102.

²⁶ UN Human Rights Council, 'Report of the Special Rapporteur on the independence of judges and Lawyers' (21 May 2013) UN Doc A/HRC/23/43/Add.3, para 22.

Serious concern has been raised on the discrimination based on religion, gender and sexual orientation.²⁷ Freedom of thought is violated by the misuse of criminal justice system.²⁸

Pakistan

The Constitution of Pakistan has guaranteed the protection and promotion of internationally recognised human rights under its constitutional framework. The country has also ratified eight major international human rights treaties. However, the human rights violations are found to be rampant ranging from forced conversions of religious minorities and crimes against women to extrajudicial killings, enforced disappearances, sectarian violence and cross-border terrorism.²⁹ In addition, the incidents of crackdown on the media, civil society the political opposition and religious minorities are also reported.³⁰

Sri Lanka

In addition to the constitutional commitment towards human rights protection, Sri Lanka has ratified all the nine core international human rights treaties. In Sri Lanka, sexual and gender-based violence, enforced disappearances, extrajudicial killings and torture, as well as restrictions on freedom of expression, peaceful assembly and association, threats to judicial independence and the rule of law are found to be key human rights violations.³¹ In addition, human rights defenders, journalists, lawyers and criminal investigators are also becoming victims of harassment and intimidation.³² Though the armed conflict in Sri Lanka ended nearly 12 years before, there exists impunity for grave human rights violations and abuses. It is reported that the incumbent government has proactively obstructed or sought to stop ongoing investigations and criminal trials to prevent accountability for past crimes.³³ Such approach of the government not only violates the rights of the victims to seek justice and reparations but also facilitate the perpetrators to remain beyond accountability.³⁴

3. The Need for Regional Human Rights Mechanism

The obligation of states to protect the human rights of its citizens emerges from both national and international legal instruments. When there is a lack of human rights policies and institutions at the national level, international human rights mechanisms may facilitate to address domestic human rights constraints and challenges.³⁵ It is noted that due to socio-cultural and contextual differences, domestic implementation of international standards may face challenges. In this

²⁷ UN Human Rights Committee, 'Consideration of reports submitted by States parties under article 40 of the Covenant' (31 August 2012) UN Doc CCPR/C/MDV/CO/1, para 7-10.

²⁸ Amnesty International, Amnesty International Report 2017/2018: The State of the World's Human Rights (Amnesty International Ltd., 2018).

²⁹ 'Pakistan witnessed substantial human rights violations in 2020: Report' *ANI News* (Lahore, 4 May 2021) <<https://www.aninews.in/news/world/asia/pakistan-witnessed-substantial-human-rights-violations-in-2020-report20210504090736/>> accessed 3 November 2021.

³⁰ 'PAKISTAN 2020' *Amnesty* (2020) <<https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/pakistan/report-pakistan/>> accessed 3 November 2021.

³¹ United Nations Human Rights Council, Resolution 25/1 (9 April 2014) A/HRC/RES/25/1

³² 'SRI LANKA 2020' *Amnesty* (2020) <<https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/sri-lanka/report-sri-lanka/>> accessed 3 November 2021.

³³ HRC, 'Promotion reconciliation, accountability and human rights in Sri Lanka' (27 January 2021) A/HRC/46/20 <https://www.ohchr.org/Documents/Countries/LK/Sri_LankaReportJan2021.docx> accessed 3 November 2021.

³⁴ *Ibid*

³⁵ Regional Human Rights Mechanisms in South Asia: Past efforts and ways forward, a publication by Asian Forum for Human Rights and Development (FORUM-ASIA), 2021, p. 35.

regard, regional mechanism can create a bridge between national human rights mechanism and international mechanisms/instruments and standards considering regional factors such as shared customs, values, and cultural practices. For example, Supranational system has been established in the three Regions-Africa, Europe and America. Such system is founded on a generic 'Human Rights Treaty,' which recognises a broad range of human rights while also establishing its own monitoring or enforcement agency or organizations to evaluate if human rights violations have occurred.³⁶

The need for regional and sub-regional human rights enforcement mechanisms have thus become crucial for the proper implementation of universally recognised human rights. The regional mechanism can complement the UN human rights system while addressing cross border human rights concerns and providing remedies for such human rights violations. Even the UN recognised the regional and sub-regional organizations so that if the rights are not recognised in the international level, it must be recognised in the regional and sub-regional level. The Vienna Declaration and Programme of Action, adopted in 1993, has also recognised the relevance of regional and sub-regional arrangements in reinforcing and protecting universal human rights norms as stated in international human rights agreements.

A regional mechanism acts as a catalyst in the monitoring of the safeguard of human rights without replacing either the national or international legal instruments.³⁷ The mechanism further assists national governments in addressing cross-border human rights violations and abuses such as terrorism-related violations and abuses, human trafficking, child sexual exploitation, migration, and endemic diseases; provide advisory services to national institutions, regional inputs to the development and improvement of international human rights standards; assist the national government in the implementation of their international human rights obligations arising from the conventions to which they are parties.³⁸ It is suggested that such mechanism should be used as an alternative development agenda which should include climate change, renewable energies, and issues related to the right to water and food security. The regional mechanism, being alternative to prolonged international procedures, can provide remedy in less costly, more accessible and more effective manner.³⁹

4. Efforts on Establishing a Regional Human Rights Mechanism in South Asia

Regional Initiative for South Asia Human Rights Mechanism (RISAHRM), being initiated in 2012, aims to coordinate advocacy and awareness campaigns towards the establishment of a regional human rights mechanism in South Asia.⁴⁰ It also works to bridge national processes and regional aspirations expressed in the Charter of the South Asian Association for Regional Cooperation (SAARC). The First Sub- Regional Workshop on South Asian Human Rights

³⁶ Shveta Dhaliwal, 'Development of South Asian Human Rights Culture: The Role of South Asian Association for Regional Cooperation (SAARC)' (2021) Vol. 69, No. 3 (July - Sept., 2008) The Indian Journal of Political Science.

³⁷ Christ of Heyns and Magnus Killander, 'Towards Minimum Standards for Regional Human Rights system'; Mahnoush H Arsanjani, Jacob Katz Cogan, Robert D Sloane and others (eds), 'Looking to the Future: Essays on International Law in Honour of W Michael Reisman' (Leiden: Martinus Nijhoff Publishers, 2010)

³⁸ Regional Human Rights Mechanisms in South Asia: Past efforts and ways forward, a publication by Asian Forum for Human Rights and Development (FORUM-ASIA), 2021.

³⁹ Gyan Basnet, 'Human Rights System for SAARC: Problems and Perspectives' <<https://www.hurights.or.jp/archives/focus/section3/2014/06/human-rights-system-for-saarc-problems-and-perspectives.html>>

⁴⁰ Ibid 37.

Mechanism was held in Kathmandu, Nepal in 2010. The outcome of the workshop indicated that human rights challenges in South Asia could be effectively addressed by establishing an independent and efficient regional human rights mechanism. During the Second Sub-Regional Workshop on South Asian Human Rights Mechanism a working group was formed in 2011. After that, a Task Force was formed comprising a member each from all SAARC countries which was mandated to collaborate with diverse national movements, campaigns and processes with a view to establishing regional human rights mechanism. A series of national workshops, consultations were held in Nepal, Dhaka, Bhutan, Sri Lanka and Maldives for greater sensitisation and influence public opinion in favour of a regional mechanism. In addition, national core committees were formed in Bangladesh, Bhutan, India, Nepal and Sri Lanka to mobilise support in favour a regional mechanism at the national level.

5. The evolution of SAARC

During the negotiation and establishment of SAARC, human rights protection at the regional level was not an agenda. SAARC Charter has deliberately abstained from making any expressed reference to human rights protection and promotion. It is noted that despite the existence of a regional institutional framework, SAARC suffers from the deficiency of a designated mechanism to address human rights violations.⁴¹ Subsequently, the Colombo Declaration (1991) acknowledged the SAARC member countries' commitment to democracy, human rights and rule of law from the perspective of development.⁴² In 1997, SAARC expressed grave concern at the trafficking of women and children within and between member countries and aimed at establishing a regional convention on combating trafficking in women and children from prostitution.⁴³

Being part of its attention towards human rights promotion and protection, SAARC adopted two different regional treaties namely, the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution and the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia in 2002. In 2004, SAARC adopted the SAARC Social Charter, which set out a range of commitments relating to development activities, particularly those focusing on poverty alleviation, health, human resource development, promotion of the status of women, population stabilisation and child welfare.⁴⁴ SAARC Charter of Democracy was adopted in 2011 with a view to protecting the democratic institutions, constitutional values and rule of law in the region from undemocratic and unrepresentative governments. SAARC Convention on Cooperation on Environment 2010 refers to promote closer cooperation among the parties for the protection and preservation, management and enhancement of environment within SAARC countries.

6. Analysing the potentials of SAARC in developing regional human rights mechanism

Within its existing organizational structure, SAARC has unexplored potentials to play an instrumental role in building a regional human rights system. The Council of Ministers (CoM), being the apex body of SAARC, is empowered to make decision on new areas of cooperation,

⁴¹ Ugo Caruso, 'Comprehensive Security in South Asia: SAARC and the Applicability of OSCE Standards' in *European Yearbook of Minority Issues Online* (Brill - Nijhoff, 2011); Rainer Hofmann and Ugo Caruso (eds) 'Minority Rights in South Asia' (Peter Lang 2011) 177.

⁴² Hidetoshi Hashimoto, *The Prospects for A Regional Human Rights Mechanism in East Asia* (Routledge 2004) 122

⁴³ Declaration of the Ninth SAARC Summit (issued 14 May 1997) art 27.

⁴⁴ Lawrence Saez, *The South Asian Association for Regional Cooperation (SAARC): An Emerging Collaboration Architecture* (Routledge, 2011) 83

review progress of cooperation, establish additional mechanism and make decision on other matters of general interest to SAARC. The Council can be a promising avenue for the establishment of compact institutional backbone that holds and unite the member states together and drives towards a collective purpose of human rights protection and promotion in this region.⁴⁵

The Standing Committee, comprising of the Foreign Secretaries of the Member States and reporting directly to the CoM, can contribute through identifying areas of human rights cooperation, mobilising regional and external resources thereto, and approving concerned initiatives and modalities of their financing. Relevant Technical Committees can also be mobilised, in addition to convening experts, for the implementation, coordination and monitoring of the human rights related programs. It is suggested that within the ambit of SAARC, the affiliated bodies of People's SAARC which has 22 recognised bodies including 5 apex bodies can be considered for working towards ensuring human rights.

However, the efficacy of SAARC has also been challenged on the ground that its organizational architecture and intergovernmental decision-making process has been scuttled by a maze of committees and bureaucracy.⁴⁶ SAARC has a deficiency of a designated mechanism to address human rights violations.

It is mention worthy that even the UN fails to provide a legal instrument to create accountability. Although Chapter VIII of the UN Charter provides a legal foundation for regional organizations to participate in the maintenance of international peace and security, there is no explicit reference to cooperation at the regional level.⁴⁷ SAARC is the only regional organization that lacks a human rights body or treaty for its members' cooperation on concerns connected to the International Covenants on Civil and Political Rights and Economic, Social, and Cultural Rights. It is frustrating to note that most of the bodies under the SAARC have not renewed their recognition with their SAARC secretariat due to new political directives. In this backdrop, different initiatives can be taken to examine how the bodies are functioning to address different emerging issues of South Asia.

All regional organizations similar to SAARC – i.e. ASEAN, the African Union (AU), the European Union (EU), the Organization of American States (OAS), the Caribbean Community (CARICOM) and the League of Arab States – have a regional body designated to address human rights violations.

In addition, there are some factors that have negatively impacted upon SAARC based regional integration.

Mistrust among South Asian Countries

Without confronting the high politics in the interstate relations between Indian and Pakistan or minimising its negative impact upon the neighbouring states, regional integration in South Asia may be a difficult proposition.⁴⁸ Caught in between the fear of 'ganging-up' against India and the prevalence of Indian hegemony, smaller member states are hesitant to immerse themselves to

⁴⁵ Anurag Devkota, 'Prospects of European Mechanism of Human rights Protection in South Asia: A Comparative Analysis of European Model with the SAARC' [2014] 3 PROLAW Student Journal of Rule of Law for Development 1, 4

⁴⁶ Sultan Hafeez Rahman, Sridhar Khatri, Hans-Peter Brunner, *Regional Integration and Economic Development in South Asia* (ADB and Edward Elgar Publishing, 2012) 26.

⁴⁷ Charter of the United Nations (26 June 1945, entered into force 24 October 1945) art. 52-54

⁴⁸ Mohammad Aminul Karim, 'South Asian Regional Integration – Challenges and Prospects' [2014] 15:2 Japanese Journal of Political Science 299, 305-306.

accelerate the natural growth of the SAARC System. Mistrust among member states has often been manifested through ineffective administration of several of the initiatives taken by the SAARC (e.g. The South Asian Free Trade Agreement- SAFTA). The issue of Kashmir while reflecting the politics of singularity has dire effects on peace and cooperation in South Asia which should be addressed before making any effective regional mechanism. The declining trends of electoral democracy in south Asia should also be reimagined.

Decline of Democratic Culture and Practice

The feeble process of democratisation in South Asia has unveiled a barrage of problems including the resurgence of populist agendas which are often avowedly nationalistic, xenophobic, misogynistic, and explicitly antagonistic to all or much of the human rights agenda.⁴⁹

Imbalance Power relations

The biggest challenge to increasing integration in South Asia is the extreme asymmetry of power balance among the member countries of SAARC. It has been argued that the South Asian Region, with its unequivocal power asymmetry and India's clear predominance as a regional power, has created an environment of regional dissonance resulting into a deadlock in regional integration process.

Influence of External Actors

The growing presence of the US and China in this region has been one of the instrumental factors in influencing the relationship among SAARC countries.⁵⁰ Consequently, South Asia as a regional community remains a distant reality mostly due to the overlaying strategic political triangle formed by the USA, Russia and China.

Considering the challenges faced by SAARC, some experts opined to explore the possibilities of other regional mechanisms such as the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC). It is suggested that until SAARC framework becomes effective, bilateral and trilateral approaches can be undertaken to resolve regional conflicts.

7. Towards building South Asian Human Rights Framework: Possible ways out

The following part discusses about the possible outline of the South Asian Human Rights System.

A Comprehensive Regional Human Rights Charter

In order to attain the objectives of SAARC, the establishment of human rights protection mechanism is a prerequisite. In order to establish South Asian Human Rights Mechanism, the first step should be to formulate an independent instrument (Convention/Charter) addressing the human rights concerns of South Asian Countries. While outlining the rights of citizens and duties of states, a right based approach considering the realities of south Asian region may be followed. The nexus between development and human rights should also be reflected in the charter. The charter should specifically address the environmental concerns of South because environment and climate change has trans-boundary impacts which deserve to be addressed by all south Asian countries.

An effective Human Rights Commission

⁴⁹ Philip Alston, 'The Populist Challenge to Human Rights' [2017] 9:1 Journal of Human Rights Practice 1, 1.

⁵⁰ Khalid Rahman, 'Regional Cooperation, Global Changes, SAARC and China' [2012] 9:1 Policy Perspectives 5, 9.

The presence of an effective Human Rights Commission is instrumental for the meaningful realisation of the rights enshrined under the proposed human rights Charter. A proposed South Asian Human Rights Commission shall be the entry point for adjudication of both the individual and inter-state communications'. The proposed Commission should act as a quasi-judicial organ where complaints can be made following a certain list of admissibility criteria (e.g. specific time limit, exhaustion of domestic remedies etc.). The functions of the Commission should not be limited to giving advisory opinions only rather it should be empowered to give remedial orders in appropriate cases. The Commission should also be tasked with the active promotion, dissemination and research endeavours in order to identify and address the common human rights concerns in South Asia considering the cultural and regional context.

An Independent Regional Human Rights Court

It is noted that free and independent judiciary has instrumental role to resolve human rights issues. Considering this, the proposed South Asian Human Rights Court can be a ground breaking step towards ensuring judicial enforcement of human rights at the regional level. The admissibility criteria for receiving complaints, from the end of both the individual and state level, shall be elaborately contained under the proposed Convention along with a specific time limit for disposal of the communication so that the proposed Court is not overburdened with cases. The use of judicial practice such as Public Interest Litigation may be applied to resolve cross border human rights issues.

Role of NHRIs in pioneering the development of regional mechanism

The role of national human rights institutions (NHRIs) in advancing the initiative of establishing regional human rights mechanism is instrumental. Being the watchdog human rights bodies, NHRIs are better positioned to comprehend human rights concerns and identify proper forum to provide remedies against human rights violations. NHRIs can also play pivotal role in undertaking strong advocacy campaign in favour of developing a regional human rights mechanism. Since NHRIs work closely with both UN human rights treaty monitoring bodies and governments, they can effectively highlight the significance of establishing a regional mechanism which will not only facilitate to fulfill human rights obligations but also contribute to resolve cross border human rights violations that may lead conflicts and destabilise neighboring countries. It is mention worthy that NHRIs in South Asia face enormous challenges in performing their due role and responsibilities and in order to address those challenges, a regional mechanism can provide them support in devising appropriate actions.

Role of CSO

The role of the Civil Society Organisations in the regional human rights system deserves admiration because of their continuous and active contribution in protecting and promoting human rights. CSOs live closely with victims of human rights violations and provide them necessary support and thereby make the victims empowered to fight back against those violations while making the governments accountable. With such contribution and experiences, CSOs can facilitate to raise opinion and consensus towards the formulation of a regional mechanism through constructive engagement and interaction with relevant stakeholders. While reviewing the government commitments towards human rights, CSOs should disseminate necessary knowledge and information which will provide impetus to underscore the necessity of having a regional human rights mechanism. CSOs should also collaborate and cooperate with NHRIs and other

human rights bodies of South Asia in formulating concrete action points towards the establishment of South Asian Human rights mechanism.

8. Concluding remarks

South Asian countries face unique challenges that necessitate unique answers. Undoubtedly the political landscape of South Asia is conflictual; inter-state tensions, growing influence of China in South Asia, existence of powerful non-state actors and reemergence of the Taliban in Afghanistan make this region one of the epicenters of global politics. However, the cultural diversity of South Asia deserves to be utilised as opportunity instead of challenge. Institutionalisation of regional integration in many regions of Asia has largely been led by "interest" rather than a shared political or cultural identity.⁵¹

On this note, South Asian countries should aim to identify shared areas of interest where they can collaborate to preserve their own interests. The South Asian countries require a method that, in addition to adhering to international standards, allows them to meet their own cultural and regional needs. In this regard, the role of SAARC in developing a regional human rights mechanism is instrumental. Despite the fact that the protection and promotion of human rights was never an agenda of SAARC and the Organization has adopted an issue-oriented go-slow policy in that regard, SAARC remains the most viable platform to date for building a South Asian Human Rights System. It is hoped that SAARC will be able to mitigate its organizational shortcomings through deliberate political efforts and effective advocacy strategies.

Through taking into account the economic, cultural, political and demographical diversity of this region, the abovementioned human rights system can successfully incorporate regional demands and expectations consistent with international standards and establish the preference of human security over national security. Considering the chronic pattern of human rights violations among SAARC member countries, a regional human rights mechanism shall not only give renewed hope to the deprived citizens but also make accountable the renegade States at the regional level for their failure to respect, protect and fulfill human rights values and standards.

⁵¹ Ben Saul, Jacqueline Mowbray and Irene Baghoomians, 'The Last Frontier of Human Rights Protection: Interrogating Resistance to Regional Cooperation in the Asia- Pacific' [2011] 18 Australian International Law Journal 23, 34-35

