CHAPTER FIVE

HUMAN RIGHTS IN SOUTH ASIA AND INITIATIVES OF SOUTH ASIAN ASSOCIATION FOR REGIONAL COOPERATION (SAARC)
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5.1 Introductory

The history of South Asia is very rich and shows reflections of civilization since Paleolithic ages.\(^1\) Geographically South Asia is clearly identifiable region with Himalayas in the North and Indian Ocean in the south and the extension from the Persian Gulf to the Straits of Malaca.\(^2\) Present day South Asia is comprised of eight countries, Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, considering membership in the SAARC as the basis. All the countries of the region share their political boundaries except for Sri Lanka and Maldives which are separated from the main landmass by Bay of Bengal and Arabian Sea respectively.

All the eight countries have shared a long common history. Under the reign of Indian king Ashoka India, Pakistan, Bangladesh, Nepal and Afghanistan were part of one kingdom and were one territory.\(^3\) Most of the countries of this region were subjected to colonialism at the hands of British and other imperial powers. These colonised countries got freedom in the first half of the twentieth century. Due to common history the region shares lot of common features pertaining to society, literature, politics, religion, culture etc. So far as commonness as an essential feature of a region is considered South Asia is a closely knit region. However, the region is not that simple in nature and has several complex features to it as discussed ahead.


5.2. The Complex Features of South Asia

The region of South Asia is highly complex and there exist many folds of relations between the States of this region. The situation of this region is full of problems and contradictions. For example, a collection of edited research papers by Kaushik Roy highlights that the South Asia has had a long history of conflicts and war, and the book also highlights that internal conflicts in the form of civil wars, coups and external aggression etc. have been a continuous part of South Asian history. The region has also witnessed two partitions. The first created Pakistan in 1947 and the second created Bangladesh in 1971.

This kind of history of South Asia is responsible for a peculiar ‘geo-psychology’ of the region. The term geo-psychology was first used by Willy Hellpach, Professor of Psychology at University of Heidelberg, Germany which means that the geographical history of any region has an impact on the aptitude of the countries towards their neighbours and other countries. This theory applies to South Asia very aptly as mentioned just above the history of this region has been full of invasions, conflicts and wars, resultanty these countries lack mutual trust and cooperation and have an inflated sense of Sovereignty which overpowers the spirit of regionalism.

The problem does not stop here. Due to mutual distrust and fear of subordination the countries of South Asia prefer building ties with countries outside the region. For example, Pakistan has been in news for its ties with the United States and China, India has been close to Russia and is exploring new trading relations in South East Asia with Vietnam in waters of South China Sea. This is also seen as a reaction to Chinese interest in Maoist Nepal. By availing options of collaborating beyond the region the South Asian countries give regional cooperation a great set

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5 id.
6 B. M. Jain, India in the New South Asia: Strategic, Military and Economic Concerns in the Age of Nuclear Diplomacy, Viva Books, New Delhi, 2011, pp. 4-5.
back as the regional cooperation is overlooked. So much so that it is believed that to strike a balance of power in the South Asian region powers from outside can play a decisive role, as has recently been published in case of Indo-China troublesome relations\(^8\) and the possible role of the US.\(^9\)

In the opinion of Shibashi Chatterjee, South Asia is a region only due to its geopolitical location and not because of affinity between the countries.\(^10\) That is why all the countries in the region are found to have an individualistic approach to policies which leads to lack of regional identity and regional initiatives.

It is due to colonial approach of the region’s countries and weak trust ties amongst them that the countries of South Asia consider human rights to be a ‘domestic’ matter and are averse to international scrutiny on this matter.\(^11\) This negative approach of these States towards human rights is added to by the variety of political regimes in the region.\(^12\) These different regimes do not resolve to one common way to address human rights, hence, it is preferred to not to take up these rights at a regional platform like SAARC.

On the contrary to the political indifference towards human rights there are a variety of human rights concerns of the region. South Asian societies are divided on the basis of religion, sects, caste, ethnicity, gender, region, language, race, economic status and so on. According to one view it is in fact the complex social classifications of each South Asian State reflects in the complicated political systems of South Asian States and it goes further to have an impact on the overall growth of the region. These divisions in the society weaken the peoples’ voice in favour of human rights protection and also these social stratifications are responsible for human rights violations such as practice of untouchability or caste

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\(^8\) Shishir Gupta, “Engaging the Dragon”, *The Hindustan Times*, 19 May 2013, p. 10.


\(^12\) Maya Chadda, *Building Democracy in South Asia: India, Nepal, Pakistan*, Lynne Reiner, Boulder, 2000, pp. 111-112.
discrimination, lower status accorded to women, religious fanaticism resulting in communal violence etc. etc.

In order to understand the regional dynamics of this region vis-à-vis human rights probably the effort has to be three dimensional. South Asia has three kinds of concerns. First are the concerns of the whole region, that is, the issues which are related to all the countries of this Asian sub-region. Secondly, those concerns of South Asia those are of individual country which are based on internal reasons and have internal implications. The third kind of human rights concerns are the ones which have origin in particular country, however, have effect on other countries as well, hence they become concern of the fist kind; that is regional concern. This is a vicious circle engulfing the human rights problems in South Asia.

It is due to the above mentioned complex nature of the human rights problem that a regional organisation is more advisable to take necessary steps in this direction instead of any one country of this region. It is this idea which is the plinth if this work. This chapter would deal with different aspects of human rights concerns of South Asia.

The discussion in this chapter would begin from the human rights problems of the region. Also, I would discuss the efforts of SAARC to address human rights related problems of the region from time to time, which is quite a neglected aspect of research related to South Asia.

5.2.1 The Complex Features of Human Rights Concerns of South Asia

The most striking feature of South Asia is pluralism. In South Asia there is found a mix of hugely varying ethnic cultures.\textsuperscript{13} For example, it is said that ‘the geographic heart of Islam is the Middle East, but the demographic heart of Islam is in South Asia’.\textsuperscript{14}

In Afghanistan, while the Pashtuns are the majority, there are significant minorities of Tajik, Hazaras and Uzbek. Though largely Sunni, there is a

\textsuperscript{13} For further details, see: Ross Mallick, \textit{Development, Ethnicity and Human Rights in South Asia}, Sage Publications, New Delhi, 1998.

sizeable Shia minority among the Hazaras. Pakistan's four major ethnic groups are the Punjabis (58%), the Pashtuns or Pathans (12%), Sindhis (13%) and Baluchis (4%), differentiated also by language. Most Baluchis, for example, speak Baluch, a language that is similar to Persian, but about a fifth also speak Brahuri, a Dravidian-derived language. The Urdu-speaking Mohajirs who migrated from India to Pakistan after partition tend to maintain a separate identity, thus forming a fifth ethno-linguistic group.15

The above excerpt reflects the complex conditions of social divide in South Asia. On the basis of language also there can be seen divisions in the people of the region. An author Kabir, as quoted by Shibashis Chatterjee, describes the confusion of the Bangladeshi people who drew their feeling of nationalism from two sources, one the religion (Hindu or Muslim) and the other was language.

If linguistic identity were to be the most important or determining factor of nationalism, the thorny question that remains to be resolved is the point of difference with the ethnic Bengalis of the Indian State of West Bengal who are predominantly Hindus.16

This mix up of identities has led to another problem of refugees in the region. Approximately forty million people have moved across national boundaries in India, Pakistan, Bangladesh, Sri Lanka, and Nepal since 1947.17 Due to cultural spill over there are new mixed identities like, Burmese Indian, Lankan Tamils, Bangla-Pakistanies and Bangladeshi Chakmas18 etc. have come into existence in the region. India alone is host to millions of Bangladeshis, Sri Lankan Tamils19, Bangladeshi Chakmas, Nepali refugees from Bhutan, since it shares its magnanimous boundary of all those countries.

In South Asia Nepal is the largest migrant producing State. Rais, Limbers, Gurungs, Newars etc. are the social groups who generally migrate from Nepal through the porous border which it shares with India. In addition to migration

15 ibid., 2008, p. 27.
16 Shibashis Chatterjee, 2011, p. 62.
17 Pramod Mishra, 2000, p. 155.
18 For further details, see: Deepak K. Singh, Stateless in South Asia: The Chakmas between Bangladesh and India, Sage Publications, New Delhi, 2010.
human trafficking along with drug paddling is in excess in the area. In 1950 there was a Treaty of Peace and Friendship signed between India and Nepal\textsuperscript{20} to mutually respect migrants from these two countries.

United Nations General Assembly adopted Convention to the Status of Refugees in 1951 and a Declaration on Territorial Asylum in 1967\textsuperscript{21} to express the seriousness of this problem. No country of South Asia is a party to the Convention to the Status of Refugees\textsuperscript{22} or has taken any steps to implement the Declaration on Territorial Asylum. Despite the social, economic, cultural and political repercussions of refugee problem in the region, South Asia has not framed any Convention or treaty under SAARC. An \textit{ad hoc} approach at State level is preferred to tackle these issues because of inflated sovereign status and intolerance towards interference.

The region has a lot of lessons to learn from other regions, for example, in Africa the African Union (AU) has adopted a Convention Governing Specific Aspects of the Refugee Problem in Africa in 1969. In Europe similar steps were taken by way of Schengen and Dublin Agreement in 1985 and 1990 respectively under European Union. In Inter-American system, the Cartagena Declaration was a similar step which was primarily a step by NGOs of the region.

In Asia however, the Bangkok Principles concerning the Treatment of Refugees of 1966 was adopted by the Asia-African Legal Consultative Committee, an inter-governmental body. This may be taken as an indication of Asia’s awareness of its pressing human rights needs. These small hints from within Asia may pave way for similar agreement for South Asia taking lesson from other regional organisations.

\textbf{5.2.2 The South Asian Cold War}

As mentioned above, South Asia has had a history of war and conflict. The mutual distrust and tension was further aggravated India and Pakistan acquired

\begin{footnotesize}
\begin{enumerate}
\item Available at: \url{http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/236/47/IMG/NR023647.pdf?OpenElement}. Visited on 21 May 2013.
\end{enumerate}
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nuclear weapons.  Rajesh M. Basrur has entitled his work as *South Asia’s Cold War: Nuclear Weapons and Conflict in Comparative Perspective* in which he has not only examined the nature of a cold war but also has compared it to South Asian scenario. The nuclear plans of Pakistan date back to post 1971 Indo-Pak war over Bangladesh and India tested Nuclear weapons in 1975 adding to the tensions of the region. The nuclear policies of the two countries have a typical background of troubled relations.

The relation between the two biggest countries of South Asia; India and Pakistan, have a troublesome history due to several factors. One of the major factors is probably that Pakistan was once part of India and the process of creation of Pakistan involved a lot of bloodshed leaving scars on the minds of both the nations. The second reason of difference of approach of these biggest neighbours in South Asia is the difference between the natures of political regimes. India is a thorough democracy whereas Pakistan has been a weak political system which has been pulled by the extremist Taliban regime, frail democratic parties and strong military rulers, in different directions. It has been difficult for India to find a friend in Pakistan because the approach towards India changes in Pakistan with each shift in political regime. That is why, even after partition, the territorial conflicts remained between the two countries and the two countries remained involved in arms race, wars and skirmishes.

South Asia has a very closely knitted landmass and in case of a nuclear war no country of this region would remain unaffected by the consequences. Secondly,

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the nuclear plans of Pakistan have always been under suspicion\textsuperscript{26} for being vulnerable at the hands of the Afghan extremists\textsuperscript{27} and also the Balkan States. Due to internal disturbances in the country these nuclear weapons tend to be more dangerous.\textsuperscript{28} India's rationale to launch nuclear program was to counter threats from China and for Pakistan the rationale was India's quest for nuclear weapons.\textsuperscript{29}

However, in one opinion both the adversaries being nuclear potent has brought stability in the region\textsuperscript{30} as there is equal deterrent for both the sides. Realizing the regional and global concern over the nuclear status of the major countries of the region India and Pakistan have been launching peace processes from time to time. However, these processes have faced several highs and lows.

In addition to all the above mentioned common problems of the region South Asia faces the threats of environmental problems as well. As a matter of fact the theme of the sixteenth Summit of SAARC was “Towards a Green and Happy South Asia”\textsuperscript{31} held from 28-29 April 2010. In this Summit a SAARC Convention on Environment was also proposed indicating the focus of the organisation on the matter. Some scholars have also expressed their concern that due to


\textsuperscript{30} The Brass-tacks Crisis 1989 and 1990, Kargil Crisis in 1999 and Indian Parliament attack of 2001-3 and the 26 November 2009 Mumbai attacks did not lead to war due to the fact that both the countries are having nuclear weapons. For further details, see: Saira Khan, Nuclear Weapons and Conflict Transformation: The Case of India - Pakistan, Routledge, London, 2009, p. 80.

\textsuperscript{31} Available at: http://www.Sixteenth saarc summit.bt/. Visited on 12 September 2010.
environmental challenges the region might face security threats as well.\textsuperscript{32}

\textbf{5.3 The Human Rights Concerns of the South Asian States}

As mentioned earlier in this chapter it is very important to understand the State specific problems related to human rights in South Asia. The particular conditions of these States not only help us in understanding the complexity of the problems faced by the people but also highlight that the distinct socio-political and cultural conditions of these States also add to the weak status of human rights in the region. Human rights concerns of individual countries emanate from social as well as political construction along with the role of religion. I have tried to discuss these aspects in the paragraphs ahead in relation to each SAARC country.

The modern day Islamic Republic of Afghanistan is situated in South west Asia as a land-locked country. It is surrounded by Tajikistan, Uzbekistan and Turkmenistan in the north, Pakistan in the south, republic of Iran in the West and China in the north east. As I have discussed the ethnic and religious aspect of Afghanistan earlier in this study, here I will discuss some other aspects of human rights problems of the State. Afghanistan has a history of Monarchical rule from 1947 to 1973.\textsuperscript{33}

The severity of discrimination against women is a cultural trait of the country. Forced marriages have long been a custom in Afghanistan. Daughters have been used as currency to settle debts, to facilitate advantageous, if expensive, marriages for male children, or to settle inter-family quarrels. The Taliban, following its extreme interpretation of \textit{Shari'a} (Islamic law), require women to remain covered from head-to-toe in garment known as the \textit{burqa}.\textsuperscript{34} In Kabul and elsewhere, women found in public who were not wearing the \textit{burqa}, or


were not wearing it properly, were beaten by Taliban militiamen.\textsuperscript{35}

The situation of the country is expected to improve after the death of the Taliban chief Osama Bin laden. Rights like freedom to expression are already gaining roots in the country as the media is growing quantitatively as well as qualitatively in the country.\textsuperscript{36} However, the political scientists are still apprehensive of the resurgence of the terror outfit which seems to have shifted the base to Pakistan. On 20 September 2011 the Talibans hit the region by assassinating the former president of Afghanistan, Mr. Burhanuddin Rabbani, who was leader of the High Peace Council in Afghanistan to resolve conflicts with Talibans.\textsuperscript{37}

The political status of the next SAARC member, Bangladesh can be well understood from the following excerpt:

The political history of Bangladesh can be broadly divided into four eras: populist authoritarianism (1972-75), military-dominated rule (1975-90), representative democracy (1991-2006), and military backed interim government (2007-08).\textsuperscript{38}

In addition to unstable political system the country faces many other problems. In 1978 approximately two lakh refugees entered Bangladesh to escape persecution by Myanmar’s army in the Arakan region\textsuperscript{39} which further imposed not only economic but also social burden on Bangladesh government. In this background Bangladesh - Myanmar Agreement in April 1992 was very significant since it facilitated the repartition of refugee population.

Religious minorities face violence and discrimination in Bangladesh,\textsuperscript{40} for


\textsuperscript{37}Alissa J. ubin and Rick Gladstone, “Rabbani is Assassinated, Chances of Peace Hit”, \textit{The Indian Express}, 21 September 2011, pp. 1-2. Also, see: Shubhajit Roy, “Terror has Silenced Powerful Voice of Peace: S.M. Krishna”, \textit{The Indian Express}, 21 September 2011, p. 12.


\textsuperscript{40}V.T. Patil, \textit{Human Rights Developments in South Asia}, Authors Press, Delhi, 2003, pp. 164-165.
example, the Hindus who fled to India and returned to Bangladesh were not entitled to their lands despite the adoption of vested Property Return Bill, 2001.  

Refugee problem also exists in the country. Bangladesh faces the problem of internally displaced people also which is due to confusing territorial divides and culture mix of the region. The country is still struggling with the memories of 1971 partition. The recent government of Bangladesh had constituted a Criminal Court to look into the war crimes of the time of creation of Bangladesh, however, by way of a recent amendment the convicts may appeal against the decisions of the Tribunal. This has triggered protests in Bangladesh largely lead by the youth. Also the younger generation is agitating for free and fair democracy where there is no interference of religion in the political matter.

In Bangladesh women, children, minority groups and the disabled people often face social and economic disadvantages, particularly in rural areas. Despite the fact that the government of Bangladesh acceded to the UN Optional Protocol to the Convention on Elimination of all forms of Discrimination Against Women, 1979 (CEDAW) the plight of women continues. The government also enacted laws specifically prohibiting certain forms of discrimination against women, including the Anti-Dowry Prohibition Act of 1980, the Cruelty to Women Law of 1983 and the Women and Children Repression Prevention Act of 1995, which was replaced by Women and Children Repression Prevention Act of 2000. However, the enforcement of these laws is weak.

Bhutan, a small country of the region, is gradually moving from Monarchy to parliamentary democracy. Judiciary is gaining strong position in the country as recently the high court has ruled in favour of the opposition party of the country.
over tax matters. The country has earned the status of being the biggest per capita producer of refugees in the world.

The ethnic divide can also be seen in Bhutan. Ngalongs of Tibetan origin are the minority and the share crops of Indo-Mongoloid or Tibeta-Burman origin are the majority and the third group is of Hindus. Drupkas being the rulers of Bhutan there are other sections of the society too. Thotsampa is the Bhutanese out-casted group which was later resettled in Bhutan but face discrimination in the Bhutanese society. Bhutan ratified the Convention on the Elimination of All Forms of Discrimination Against Women in 1981 and established a National Commission for Women and Children in 2004.

India, the largest country of South Asia is an established parliamentary democracy with an independent judiciary. However, the country faces several human rights challenges. India is a secular state and is multicultural in nature. This leads to communal violence. The country nestles Hinduism, Buddhism, Jainism, Christianity, Judaism and Sikhism. However, extremist approaches of some religious fanatics challenge the secular fabric of the country.

India suffers from home grown Hindu extremism by Shiv Sena, RSS, Bajrang Dal, as well as Muslim extremism which is home grown, for example, Indian Mujahideen and also due to foreign involvement in internal matters of India like Kashmir. Islamic terrorism has had affect on India’s symbol of Democracy in December 2001 when there was attack on Indian Parliament and again another terrorist attack hit India on 26 November 2009 and yet again in Delhi High Court premises in September 2011 and then again the historically devastating terror attack of 26 November 2011. It was only in November 2012 that the captured terrorist of the 26

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50 ibid., p. 279.

51 This terrorist outfit had taken responsibility of the Delhi High Court Bomb Blast which shook the country on 7 September 2011. After the incident the US has also banned this outfit as international terrorist organisation.
November 2011 attack, Kasab was hanged after a due trial in the court.52

Also, due to Afghanistan's effect on Pakistan, India is more exposed to terror outfits like Lashkar-e-Toiba and Taliban. There is a history of such ill effects on India for example, the US backed *Mujahideen's* campaign against the Soviet forces in Afghanistan, began providing support to the Sikh secessionism in India in 1980s.53

For a young country like India corruption is a major concern. Recently an anti corruption movement launched by Anna Hazare hit the country and was noted by the whole world, wherein it was demanded that the some changes be made in the proposed Jan Lokpal Bill so that its provisions are strong enough to counter rampant corruption in the country in an effective manner.

In addition to the matters mentioned above, India faces a lot of problems related to refugees. From Bangladesh India receives Buddhist *Jumma* refugees from the Chittagong tracks who left their homes in order to escape harassment from Muslim government of Bangladesh.54 After an agreement between India and Bangladesh these refugees were sent back in 1994 but they continued to face challenges and discrimination. India is also home to Burmese refugees who fled from army rule of Mayanar. The presence of *Chin*, *Nagas*, *Rakhain* and ethnic Nepalese of Bhutan nationality are not even acknowledged by the Indian authorities.55 India is also home to several stateless persons as is evident form the following excerpt:

Sri Lankan repatrians in India, Burmese refugees in Thailand, Vietnamese refugees in Combodia and many ethnic Chinese in all parts of South Asia are currently stateless and thus especially vulnerable to the same types of human rights violations as those suffered by Chakmas and Hajongs of Arunachal Pradesh.56

India is also facing problems with the tribal people in some areas.57


55 *ibid.*, p. 20.

56 *ibid.*, p. 22.

India is the most established democracy in the region and has good record of respect for human rights if we speak in comparison to other South Asian countries. However, it does not mean that Indian society is clear of any human rights issues, especially against women.

Even today dowry, son preference, restriction on public life of women is prevalent within Indian society. Female foeticide and infanticide are posing a big threat to the sex ratio of the country. Rapes, molestation are also reported in rural as well as urban areas. Due to the presence of various religions; some religion based discriminations like *purdah*, child marriage, polygamy are also present in the highly diversified Indian society.\(^58\) Women of 'so called' lower castes face double trouble, as they are victim of discrimination for two adverse features, one being a weaker sex, and second being a lower caste.\(^59\) Women also became victims of violence by the security forces and armed opposition groups and as a result of cruel cultural practices.\(^60\)

The National Commission for Women was set up in India, as a statutory body in January 1992 under the National Commission for Women Act, 1990 as per Act No. 20 of 1990 of Government of India, to review the Constitutional and legal safeguards for women; recommend remedial legislative measures, facilitate redressal of grievances and advise the Government on all policy matters affecting women. On 16 December 2012 a young girl was gang raped in a moving bus on the roads of national capital of India and was brutally beaten due which she died. The youth of the nation took to streets and agitated for better security for women. It seems that India is yet to prove its potential to its own people.

Maldives comprises of 1,190 Islands with parliamentary form of government.\(^61\) The government works to implement the Islamic rules. The President is the strongest in the government and normally political parties are forbidden by the president to take part in political processes on the ground that they are


\(^{59}\) Available at: www.ncrb.nic.in/crime 2005. Visited on 12 September 2010.


inappropriate. Discrimination against religious minorities is also observed in the country. Migrants live a restricted life and the government has no laws for refugees. Islamic constitution opposes the role of women outside the household. Traditionally women have played a subordinate role in Maldivian society, although they now participate in public life in growing numbers and gradually have been participating at higher levels. Though “… gender equality in relation to national development, law and politics” was one of the seven main features of the Constitutional and Political Reforms of President Gayoom adopted on 9 June 2004. Otherwise a peaceful country Maldives suffers from the ill effects of the region as mentioned below:

In February, the foreign ministry repatriated nine Maldivian men arrested in Pakistan during military raids on armed groups. The government revealed at the time that three more had died in Pakistan while they were being transported between facilities. Later that month, Vice President Dr. Mohammed Waheed Hassan Manik told Indian press that young Maldivians were being recruited by militant organizations in Afghanistan and Pakistan to wage jihad. Based on official statistics, the government estimates that there are between 200 to 300 unregistered students in Pakistani schools.

The 2008 Constitution of Maldives also provides for a Human Rights Commission from Articles 189-198. This constitution is much more democratized version of all the previous Maldivian constitutions with a lot of room for improvement.

Nepal remains a predominantly a Hindu State even after being declared a secular one. Recently Nepal has shifted from centuries old Monarchical system and

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62 ibid., p. 317.
63 ibid., p. 318.
64 ibid., p. 320-321.
adopted a Parliamentary form of government. The political conditions of Nepal are unstable yet again after a few years of stable democratic government in the country. The rift between the Maoists and the other political parties has led to a fragile condition in the state. The State is in process of framing a new constitution to suit the democratic system of Nepal.

Nepal has its own problems raising some human rights related questions for example, the problems of receiving millions of Tibetan refugees. Nepal is the one such country of the South Asian region from where most girls are trafficked into other countries of the region and to whole of the world. Within the Kathmandu valley, prostitution is another big problem. A children human rights group states that 20% of the prostitutes in the country are younger than 16 years of age. In May 1999, the Ministry of Women and Social Welfare opened Women's Self-Reliance and Rehabilitation Centre, rehabilitation and skills training centre for those women who have returned to the home country after having been trafficked.

Communal tension between the Madhes and the Pahadi sections has been seen in Nepal. The former accuse the latter of excluding them form the political participation in the country. These tensions are found in Terai region. Due to some unsatisfied minority sections the relations between Nepal and Bhutan also face a challenge since minorities like Lhotshampa have settled in Bhutan illegally. China keeps a constant vigil over Nepal so that the Tibet cause could not be promoted from this land. The minority Tibetan community in Nepal faces many problems, as reported by the Human Rights Watch.

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numerous abuses at the hands of Nepali authorities as Nepal has reportedly come under pressure from China to quell any protests in Nepal over Chinese rule in Tibet. Nepali authorities reportedly made an estimated 8,350 arrests of Tibetans, out of an estimated total population of some 20,000 Tibetan refugees, exiles, and asylum seekers, during the period between March 10 and July 18, 2008. Nepal is a key transit route for Tibetans seeking to reach India. Human Rights Watch accused the government of Nepal of unnecessary and excessive use of force, arbitrary arrest, sexual assault of women during arrest, arbitrary and preventative detention and beatings of Tibetans in detention, and unlawful threats to deport Tibetans to China.\textsuperscript{74}

There are several hints stating that Nepal being has been influenced by China. The Nepal Home Ministry Spokesman Modraj Dotel stated in March 2008 that “We have given the Tibetans refugee status and allow them to carry out culture events. However, they do not have the right for political activities ... we will not allow any anti-China activities in Nepal and will stop it.”\textsuperscript{75} As another example, in April 2011 there was a proposal to work in Lumbini, the birth place of Lord Buddha, to make it a ‘Mecca of Buddhists’ by Chinese government, which was later denied by the Nepalese authorities.\textsuperscript{76}

The second largest country in South Asia after India is Pakistan. The fervour of nationalism behind the creation of Pakistan was dominated by religious sentiments and promised to be home for Muslims in South Asia. However, within Muslims, the Bengali Muslims began to be recognized as \textit{Muhajirs}, there were others known as \textit{Balochs} and \textit{Pathans} which further compartmentalized the Pakistan’s society.\textsuperscript{77} Moreover, in Pakistan there is a problem of religious fundamentalism which results in stringent legal pronouncements. These laws are criticized for being insensitive towards women and minorities.\textsuperscript{78}

There have been recent attacks on the Shia sect of the Muslims in Pakistan. The gravity of the situation can be well understood by the following excerpt:

\textsuperscript{74} “Adding Insult to Injury”. Available at: http://www.hrw.org/node/103238/section/3. Visited on 22 November 2012.

\textsuperscript{75} \textit{ibid.}, p. 10.


\textsuperscript{77} Swarana Rajgopalan, 2006, p. 17.

\textsuperscript{78} S. Subramanian, 2007, p. 588.
Across the country, anti-Shia violence is on the ascendant. Even the remote areas of Gilgit-Balistan, a Shia-dominant area, are not not free of such targeted attacks. Visitors to the picturesque Hunza valley say that the historic Karakoram Highway is dotted with villages that have literally wearing Shia martyrdom on their sleeves. Villages have put up signposts listing their people who have been killed in sectarian violence; many of them pulled out of buses, identified either by their names or by self flagellation marks men aquire during Muharram, and gunned down to slogans such as “Shia Kafir” (Shias are infidels).79

According to a US country Report on Pakistan,80 there has been a continuous tug of war between the democratic regimes and military in Pakistan which remained a fact of this country as mentioned by different scholars.81 In addition to an unstable political system Pakistan has faced human rights challenges from religious intolerance extra judicial killings, disappearances; torture etc. which prevailed in the country. Political rights are also violated by the laws of Pakistan according to some scholars. For example, minorities cannot vote in Muslim constituencies; Pashtuns being in Federally Administered Tribal Areas are not represented in the assembly of North - West Frontier Province82 and Pashtuns also face other human rights related violations.83 Due to territorial conflict with India people of Hunza and Gilgit are devoid of their political rights.

Women in Pakistan have been victimized under the Offence of Zina (Enforcement of Hudood) Ordinance of 1979. Under the Hudood Ordinance, victims of rape face insurmountable legal barriers to securing a conviction of the accused, including production of at least four adult male Muslim eyewitnesses, who must be truthful persons and abstain from major sins (kabair) and have physically seen the act of rape against the victim in order to prove her case.84

80 Available at: http://www. The persecution. org/ ussd/ us 93_ 1. html. Visited on 12 September 2010.
   Also, see: S. Subramanian, 2007, p. 593
81 For further details, see: Maya Chadda, 2000, pp. 37-38.
Recently, Pakistan has been seen as facing a spillover of Islamic terrorism and has recently been victim of several bomb blasts. The common boundaries between Pakistan and Afghanistan have recently become an international concern. There is widely held assumption at one point that Pakistan is heading towards becoming a failed State of South Asia. As a ray of hope the country has held elections to rejuvenate its democracy and Nwaz Sharif has become the Prime Minister of Pakistan for the third time. It is a positive sign for the country as it has restored its democratic feature in these elections and it is equally good sign for India as Nawaz Sharif is one of those leaders in Pakistan who actually gave preference to good bilateral relations with India. Almost immediately after becoming sure of his victory in the elections Nawaz Sharif has sent across a gesture of friendship to Indian government and has been responded in the same manner by the Indian Government also.

Next country of this region to be discussed is Sri Lanka. Separatist movement based on ethnic issues has done a lot of damage to the country’s growth and development. Minorities have been very problematic matter in South Asian history so is true for Sri Lanka. This country was already a hybrid island at the onset of European colonialism in the region with migrants settled from not only the subcontinent but also from Arab, Africa and Malay world.

The consciousness of nationality was aroused separately in three different groups in Sri Lanka, the Sri Lankan elite, the Sinhala Buddhists and the Tamils. The power went to the Elites and the Sinhalas being majority were also...

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85 For further details on Terrorism in South Asia, see: Robert Co. Stress, Democracy and Dictatorship in South Asia: Dominant Classes and Political Outcomes in India, Pakistan and Bangladesh, Praeger, Westport, 2001, pp. 78-79.
87 “Nawaz Sharif set for Third Term as PM”, The Hindu, 13 May 2013, p. 1
88 “Pakistan’s Vote for Change”, The Hindu, 13 May 2013, p. 6.
91 For further details, see: Swarna Rajagopalan, State and Nation in South Asia, Viva Books New Delhi, 2006, p. 5.
accommodated due to majoritarian democracy. In this process Tamils were left out\textsuperscript{93} by the political situation of the country and resorted to extremist methods. The country has been disturbed by ethnic tension\textsuperscript{94} resulting in terrorism led by Liberation Tigers of Tamil Elam (LTTE).

Indo-Sri Lankan relations remained tense due to Tamil violence in Sri Lanka and the ethnic ties of the Tamils with India.\textsuperscript{95}

Sri Lanka and India, although separated only by a channel, have never gotten along well. It is like the UK and France being at war with each other, centuries ago. Both Colombo and New Delhi are really distant neighbours. Their mistrust is so deep that one attributes all types of motives to the other. Yet, all their enmity is not over territory or policies but on the discriminatory treatment meted out to Tamils living in Sri Lanka.\textsuperscript{96}

The civil war between the Sri Lankan government and Tamil outfit millions of Tamils reach Indian coasts of Tamil Nadu and Orissa\textsuperscript{97} which dragged India into the situation and the latter sent Indian Peace Keeping Forces to help the Sri Lankan government. In 1991, this intervention resulted in assassination of the then Indian Prime Minister Mr. Rajiv Gandhi. This also hampered the growth of regional cooperation in general and postponement of a SAARC Summit in particular. Fortunately, LTTE commander, Prabhakran, has been killed after a long ambush between the government forces and LTTE men.

But in post conflict stage also the country faces tough challenges as the Tamil diaspora has accused the government of gross human rights violations of the innocent people by the Special Task Force during the fight between the LTTE and the government forces.\textsuperscript{98} The Human Rights Council of the UN has condemned the human rights violations of the civilians by the Sri Lankan government. India

\textsuperscript{93} Swarana Rajgopalan, 2006, p. 17


\textsuperscript{97} V.T. Patil, 2003, p. 9.

being home to Tamilians also condemned the war crimes mentioned in the UN report.\textsuperscript{99} In the UN’s session on this issue India voted against its neighbour at fault.

In addition to this, the situation of civil war and terror threats has caused Sri Lankan economic weakness. Europe has been highlighting the importance of human rights and democracy in its relations with Sri Lanka. For example, the first article of the EU-Sri Lanka Cooperation Agreement, signed in 1995, stipulates that cooperation ties between both parties and the agreement itself in its entirety are "based on respect for democratic principles and human rights."\textsuperscript{100}

Violence against women and child prostitution is also rampant in the country.\textsuperscript{101} Realizing poor conditions of women in the country Sri Lanka adopted a Women Charter, which mentions duty of the state as follows:

The State shall take measures to prevent the phenomenon of violence against women, children and young persons is society, in the workplace, in the family as well as in custody, in particular such manifestation of it as a rape, incest, sexual harassment, physical and mental abuse, torture and cruel, inhuman degrading treatment.\textsuperscript{102}

During this detailed overview of the general human rights conditions in the region I have tried to keep mentioning the aspects which originate in one country but have effect on other States of the region too. These may be ethnicity, language, terrorism, security issues, political instability etc.

Despite all the negative traits the region of South Asia is a promising region with gifted resources. In recent news it was mentioned that the United States eyes Asia as more important than even Europe.\textsuperscript{103} It is evident that the sub-regions of Asia must enhance their image in order to make the best of this global expectation.


\textsuperscript{101} S. Subramanian, 2007, p. 667.


\textsuperscript{103} “Asia far More Important than Europe to US”, The Times of India, 16 September 2011, p. 10.
especially by establishing harmony and being together.

There are several indications that South Asia has already has the awareness of the fact it can progress only in unison. For example, to promote trade and people to people contact in June 2011 India and Sri Lanka have resumed the ferry link after decades of gap.\textsuperscript{104} India has shown its support to the newly elected government of Nepal and proposed certain areas where the two governments can work together. On 14 November 2011 the SAARC countries have also adopted Addu Declaration on ‘Building Bridges’ wherein twenty points were agreed upon for cooperation between the members countries.\textsuperscript{105} The Declaration also reiterated the faith of SAARC countries in the universal human rights.

SAARC has been doing its bit to address the human rights concerns of the region. Before discussing these efforts it is important to discuss the organization of SAARC which has been discussed in the paragraphs ahead.

5.4 The Organisation of SAARC

The highest organ of SAARC is the Heads of State or Government Meetings also known as the Summit Meeting, which is an annual affair. However, SAARC has conducted fifteen summits since 1985.\textsuperscript{106} SAARC also holds Ministerial Meetings


\textsuperscript{106} Colombo refused to host the Fifth Summit in 1989 due to New Delhi’s Failure to completely withdraw IPKF. After the forces were withdrawn fully in 1990 the Colombo agreed to host the Summit. However, the 1990 Summit which was to be the Sixth one was already declared in favour of Maldives. After intervention the decision was made in favour of Maldives. The Sixth Summit which was scheduled from 7-9 November 1991 was also postponed since the King of Bhutan was unable to attend the Summit due to unrest in the country. Every country except for India agreed to have a representative of the King to carry on with the Summit. India argued that it will be overruling the SAARC’s Charter. From 1999 to 2002, no SAARC annual Summits were held because of India’s period was driven primarily by three issues. First, there was a strong official opposition in New Delhi to the Indian Prime Minister’s sharing of a platform with General Musharaf, who came to power through a military coup. Second, Prime Minister Vajpayee was deeply disappointed with the failure of his peace initiative at the Agra summit in July 2001, where, despite India’s opposition, President Musharraf sought to focus on the resolution of Kashmir issue. Third, Prime Minister Vajpayee, responding to domestic
on important areas of regional cooperation and are of equal importance of that of the Summits.

The organization of SAARC was laid out in the SAARC Charter. Article 4 of the SAARC Charter provided for Council of Ministers which was similar Committee of Ministers of the CoE however, in SAARC's Council of Ministers the foreign ministers of states party were the members unlike the CoE's Committee of Ministers where the members are Parliamentarians of the States parties. Para 2 of Article 4 provides that this Council shall meet twice a year with the provision for an extraordinary session. Article 5 mentions the standing committee which was to be comprised of foreign secretaries. The frequency of its official meetings was kept open and it was to submit provide reports to the council and the period of reports was also not mentioned.

There was a provision for the Technical Committees in Article 6 of the Charter and were to submit reports to the standing committee. The methods to be used by these committees were: meetings of hands of national technical agencies, meetings of experts in specific fields, contact amongst recognized centers of excellence in the region, as per par 5 of Article 6. The new SAARC Integrated Program of Action (SIPA), the number of Technical Committees was reduced to threaten to bring clarity and to reduce complexities. The Standing Committee could also set up Action Committees for the execution of projects involving more than two but not all member states as mentioned in Article of the Charter.

Article 8 of the Charter provided for a secretarial without giving any further details. SAARC secretariat was established in 1986 during, second Summit at Bangalore, the foreign ministers signed a Memorandum of Understanding (MOU) for the establishment of SAARC Secretariat. The SAARC Secretariat was inaugurated at Kathmandu, Nepal on 16 January 1987. It comprises of the pressure, took a strong stand against Pakistan's alleged involvement in a terrorist attack on Indian Parliament in December 2001. Although India later agreed to attend the summit meeting in Mathmandu in 2002 - where the “famous handshake” between President Musharraf and Prime Minister Vajpayee was widely perceived as a peace overture between the two countries - it refused to attend the summit in 2003 scheduled to be held at Islamabad.

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Secretary General, one Director from each Member State and General Staff. The Council of Ministers was to appoint the Secretary General out of the nominations of member countries, which is a method similar to the other regional organizations, discussed in the previous chapter.

Unanimity in decisions is a peculiar feature of Asian regionalism which is also seen in SAARC. Article 10 of the Charter provided that all decisions were to be taken unanimously. This particular provision is supposed to have hampered the growth of SAARC. The Standing Committee is assisted by a programming committee which meets prior to the standing committee session. It has been also assigned to consider the reports of the SAARC Regional Centers, Recommendations of the Technical Committees and submit it comments to the Standing Committee. This procedure is similar to the process of the original ECHR wherein the Commission was to submit its reports to the Committee of Ministers of the CoE. Also, the recommendations of the Technical Committees were similar to the recommendations procedures adopted by the CoE for human rights implementation. However the major difference is that the Technical Committee of the SAARC is not involved in human rights monitoring as such.

Looking at SAARC in retrospect, it is observable that the association has passed through two distinct phases. The first phase was the preparatory phase, based on a gradual and step by step approach to initiating regional cooperation, mostly in non-controversial and peripheral areas such as confidence-Building Measures. The Integrated Programme of Action (IPA) is an example of such an approach. It was during this phase that the minimum necessary institutional mechanisms were put in place for the operationalisation of a limited number of activities under the SAARC framework.

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109 SAARC Agricultural Information Centre (SAIC), Dhaka, SAARC Meteorological Research Centre (SMRC), Dhaka, SAARC Tuberculosis Centre (STC), Kathmandu, SAARC Documentation Centre (SDC), New Delhi, SAARC Human Resources Development Centre (SHRDC), Islamabad, SAARC Coastal Zone Management Centre, Maldives, SAARC Information Centre, Nepal, SAARC Energy Centre, Pakistan, SAARC Disaster Management Centre, India, SAARC Cultural Centre, Sri Lanka, SAARC Forestry Centre, Bhutan. See: Kishore C. Dash, 2008, p. 101.
In the second half of its evolution, SAARC moved into the expansionary phase, when regional cooperation was expanded both in the social and core economic sectors. Many major commitments with far reaching implications for the region were undertaken, including the coming into force of the South Asian Preferential Trading Agreement (SAPTA). However, the member States did not nest in out these commitments to ensure the expected level of effectiveness. As a consequence, a disjunction developed between the decisions taken by the association and their implementation.110

5.4.1 Human Rights Concerns of the SAARC

South Asia has complex and inter-linked societies and cultures. The region has a lot of commonality which, on the contrary, causes problems for the region which I have discussed to a certain extent ion the previous part of this chapter. These concerns were articulated by the SAARC in 1986 after coming into existence in 1985, as a similarity to the CoE which came into being in 1949 and began its work on human rights in 1950.

Concern for the peoples and their economic and social rights was articulated throughout the SAARC Charter. At the second SAARC Summit held in Bangalore on 16-17 November, 1986 it was urged that the United Nations Convention on the Rights of the Child should be adopted. It was repeated in the third Summit held in Kathmandu on 2-3 November 1987. At the fourth Summit held in Islamabad on 29-31 December 1988 the idea of a ‘SAARC - 2000: A Basic Needs Perspective’ was discussed which again was a hint towards social needs of the people of South Asia.

At the fifth Summit held in Male on 21-23 November 1990, it was expressed collectively to observe 1990 as the ‘SAARC Year of the Girl Child’ and the decade ‘1991-2000 AD’ as the ‘SAARC Decade of the Girl Child’ another social aspect of human rights111. At the sixth Summit held in Colombo on 21 December


1991, ‘Poverty Alleviation’ was added as an important concern along with the expressed need for protection of the environment. It was also agreed that 1991 should be ‘Year of Shelter’ and ‘Shelter for All by 2000’.

In the seventh Summit held in Dhaka on 10-11 April 1993, a consensus on ‘Eradication of Poverty’ was announced. Also, a ‘Plan of Action for the Disabled Persons’ was adopted and ‘People-to-people Contact’ was added to SAARC concerns. Human development was added to the concerns, ‘A policy of human development, including the enhancement of the social role and status of poor women, the provision of universal primary education, skill development, primary health care, shelter for the poor and protection of children’. The eighth Summit held in New Delhi on 2-4 May 1995 marked the first decade of SAARC. All the items related to human security mentioned in previous declarations were mentioned and some were elaborated. The ninth Summit in Maldives in Male held on 12-14 May 1997 decided that:

A ‘Group of Eminent People (GEP) be constituted, with distinguished backgrounds in activities pertaining to regional cooperation, comprising of one representative from each Member State, with the discretion of each Member State to appoint an additional representative’. GEP was to evaluate the performance of SAARC and develop a ‘long-range vision and formulate a perspective plan of action including a SAARC Agenda for 2000 and beyond which will spell out the target that can and must be achieved by the year 2000. The Group may report to the Heads of State or Government at the 10th SAARC Summit.

In the Male Declaration in Para 63 human rights were clearly referred to and the States committed to the ‘the promotion and protection of human rights, the Heads of State or Government resolved to take all necessary steps to achieve this objective’. Also in the Para 64 it was expressed that the SAARC States were ‘concerned over trends to erect new protectionist barriers by linking imports from developing countries to politically motivated social and environmental values and concerns, such as human rights.’

In 2004 SAARC took a step which was closely inspired by its European counterpart the CoE. That was the adoption of the South Asian Social Charter similar to the European Social Charter, 1961. For the first time the idea of a Social Charter was proposed by the GEP, and was put forward at the tenth Summit held in Sri Lanka in Colombo from July 29-31, 1998, which is a great similarity between the European Human Rights Mechanism and South Asian

The twelfth Summit held in Pakistan in Islamabad in 4-6 January 2004 reiterated past commitments to human security. And ultimately in 2004 the Social Charter was signed at Islamabad. Since then the charter has been given emphasis on every occasion of SAARC. At the thirteenth Summit in Bangladesh in Dhaka, on 12 - 13 November 2005, it was acknowledged that the realization of the Social Charter was ‘crucial to enable SAARC to meet the hopes and aspirations of the common peoples of South Asia and visibly improve the quality of their lives’.

At the fourteenth Summit held in Delhi, India on 3-4 April 2007 issue of human security was taken up and reiterated the need to realize the Social Charter. The fifteenth Summit held in Colombo in 2-3 August 2008 signed the SAARC Development Fund. With regard to legal obligations elucidated in Article 1 of the Social Charter, dealing with general provisions the Charter states, ‘State Parties agree that the obligations under the Social Charter shall be respected, protected and fulfilled without reservation and that the enforcement thereof at the national level shall be continuously reviewed through agreed regional arrangements and mechanisms. The implementation of the Social Charter is facilitated by a National Coordination Committee or any appropriate national mechanism as may be decided by each country. That means there is no SAARC authority or institution assigned with the duty to oversee the implementation of this Social Charter. It remains an obligation of the State parties. There has been no amendment or addition to the South Asian Social Charter till date.\textsuperscript{112}

SAARC adopted a number of Conventions and agreements hinting upon human rights concerns of the region, without using the term ‘human rights’ of course.\textsuperscript{113}


From time to time there have been voices in favour of a human rights mechanism under the aegis of SAARC to adopt a comprehensive human rights system rather than a bifurcated approach.\textsuperscript{114} This study is also devoted to this idea.

5.4.2 Human Rights Initiatives Taken by the SAARC

In the fourth chapter I have tried to trace the UN’s initiatives to launch a human rights system in Asia. As a complement to those efforts SAARC has also taken certain initiatives in this direction which I will discuss here. In 1997 the Declaration of the Ninth Summit of SAARC\textsuperscript{115} countries was adopted and it recognizes the importance of gender equality and empowerment of women, raising education and literacy rates, and the reduction of population rates, among others. The Declaration expressed concern at the trafficking of women and children within and between countries. They decided upon the feasibility of establishing a Regional Convention on Combating the Crime of Trafficking in Women and Children for Prostitution and Convention on Regional Arrangement on the Promotion of Child Welfare in South Asia.

In 1993 the Declaration of the Seventh SAARC Summit\textsuperscript{116} was adopted. The Declaration states that governments commit unequivocally to eradication of poverty in South Asia, the provision of universal primary education, primary health care and


SAARC also has adopted the Convention on Terrorism and the Regional Convention against Drug Abuse and Drug-Trafficking, SAARC decided to observe the years 1991-2000 as the “SAARC Decade of the Girl Child” and the years 2001-2010 as the “SAARC Decade of the Rights of the Child”. The Declaration states that governments commit unequivocally to eradication of poverty in South Asia, the provision of universal primary education, primary health care and shelter for the poor and protection of children.

In 2010 South Asian countries Dhaka Declaration on Reducing Overcrowding in Prisons in South Asia was adopted in which a wide range of international human rights initiatives were invoked related to prison reforms and human rights of the prisoners more specifically regional efforts, as in the excerpt under:

Bearing in mind that prison conditions and management systems should respect the dignity of the person and that the essential aim of prison is to rehabilitate offenders back into society in line with the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other international human rights instruments ratified by SAARC countries;

Recalling the minimum standards laid down in the United Nations Standard Minimum Rules for the Treatment of Prisoners; and the emphasis on restorative justice approaches in appropriate cases set out in the United Nations Standard Minimum Rules for Non- Custodial Measures (the Tokyo Rules);

Having regard to the regional efforts for the promotion of basic rights of prisoners, as considered by the Pan-African Conference on Penal and Prison Reform in Africa, held in Ouagadougou from 18-20 September 2002, and the Latin American Conference on Penal Reform and Alternatives to Imprisonment, held in San Jose from 6-8 November 2002, and pursued by the African Union and the Organisation of American States, as well as the Asian Conference on Prison Reform and Alternatives to Imprisonment, held in Dhaka from 12-14 December 2002.117

The seventeenth Summit of SAARC was devoted to the theme ‘Towards a Green and Happy South Asia’ and the leaders signed a SAARC Convention on Cooperation on Environment.\textsuperscript{118} This should be seen as SAARC’s step towards global effort to address climate change a human rights concern.

Dias has been quoted in Hidetoshi Hashimoto’s \textit{The prospects for a Regional Human Rights Mechanisms in East Asia}, “SAARC countries agreed to take an issue-oriented approach, for example, to focus on child labor, migrant workers, refugees, poverty problems and the education of the girl-child. This is a beginning. From there they can move forward. They are moving forward in the direction of establishing a human rights institution”.\textsuperscript{119} Such comments of scholars need to be appreciated and further worked upon in order to bring such ideas into practice.

\textbf{5.5 Human Rights Initiatives Taken by Non-Governmental Organizations in the South Asia}

Like all other regional human rights systems of the world in South Asia also the role of NGOs is of great importance as far as the laying of the foundations of a human rights system is concerned.\textsuperscript{120} At the operational level, inter-governmental agencies in charge of human rights implementation hesitate to readily concern themselves with violations of human rights by States. They either deliberately close their eyes at most such violations, whether by way of paying homage to the principles of sovereignty of the states or on the basis of the simpler principle of political expediency. After all, States would not encourage an inter-governmental agency to play a role which would eventually undermine the very state system which created it. Human rights are increasingly becoming a “political” issue, with States raising it on the international plane merely to embarrass others, or deciding against raising it merely to avoid a similar embarrassment to them at some future time. To counter this situation role of NGOs is very helpful.

\textsuperscript{118} Available at: http://www.ups cguide.com/content/information-about-saarc-summits. Visited on 24 December 2012.

\textsuperscript{119} Hidetoshi Hashimoto 2004 at pp. 122-123.

Keeping in view the focus on 'Nation Building', colonial tendencies of the governments and political instabilities in South Asia, various Non-Governmental Organisations have been very active. These NGOs, popularly known as the 'Civil Society', have been working with great commitment and conviction in order to spread awareness about human rights and have also been working dedicatedly to ensure protection of human rights of people in these countries. Some of the most noticeable NGOs and some of the mentionable works done towards the promotion and protection of human rights in South Asia are as below:

The South Asian Forum for Human Rights (SAFHR) is a creation of Non-Governmental Organizations of South Asia encouraged by the South Asian Association for Regional Cooperation (SAARC) to promote the observance and respect for human rights. South Asia Human Rights Documentation Centre (SAHRDC) is another organisation working actively in the region for the cause of human rights. It enjoys special consultative status with Economic and Social Council (ECOSOC) of the United Nations. In order to work towards the establishment of a South Asian human rights mechanism the role of the NGOs if going to be crucial as has been discussed in the blue print for the proposed stages of South Asian human rights system in the last chapter of this work.

5.6 Human Rights in South Asia: Problems in the Past and Prospects for the Future

Bharat Anand has pointed out in his article that in Afro-Asian and Latin-American Countries there are certain traceable reasons for delay in coming up of human rights system.\textsuperscript{121} These reasons are applicable to South Asia as well since this region fits in the scope of Afro-Asia and Latin American Countries. Some major factors for the delay in human rights mechanism for South Asia understandably are as follows:

- Colonial Legacies and adaptation to exploitation
- Cultural taboos

• Stress on national building principles

• Political instability

• Fragile economies and unfavourable international economic order

• Inflated sovereign status and arms race

• Mutual distrust among the member countries

In recent decades, Asia has emerged as one of the most contested sites for the increasingly powerful international human rights movements. As a sub-region of Asia, South Asia also has great prospects. However, the region faces an innate contradiction that it is a homogenous area with glaring features of heterogeneity. It is paradoxical that this region suffers from the problems; the origin of which lies in the commonality of its States. And the common features of the countries of South Asia have been adding to their conflicts rather than contributing to their mutual cooperation.

Models of the existing regional arrangements are, therefore, only of limited usefulness because of uniqueness of South Asian region and due to its weaker unity over the question of how human rights should be strengthened at regional level. For the success of such an arrangement, it is necessary that the parties should respect each others’ rights in the midst of diversity. The differentiation between the western and the eastern ideology on human rights is also clearly evident from the fact that the western emphasis is mainly on the civil and political rights such as freedom of expression and conscience, while the eastern ideology emphasizes more on economic, social and cultural rights to education.


123 id.


and right to social security etc. etc.

The South Asian society in general is more inclined towards the community and group rights rather than the human rights which are conceptualised as individualistic human rights. This has been discussed in the second chapter while discussing the philosophies of human rights pertaining to South Asian societies. There is more emphasis laid on the duties of the individuals towards the society in eastern view of human rights. There is another hurdle in the way of establishment of a regional human rights system in South Asia. Several countries in this region are still under monarchy and authoritarian military governments, so there is a governmental tendency to be wary of civil and political rights such as freedom of expression, thought, and assembly. Another point to be considered is that economic circumstances of South Asian countries are also not similar in many countries like Bangladesh, India, Pakistan and Philippines etc. Poverty is one of the major causes of denial of human rights.

Almost all the countries of South Asia have been experiencing wide spread violation of human rights. However, surprisingly, it is the only region as defined by the United Nations which is without a Human Rights Treaty of its own. As the region is progressing, and it is high time to develop a human rights culture which caters to its specific demands. Although the United Nations is the supreme agency to keep guard of human rights implementation, it has its own limitations as a single agency cannot take care of such a sensitive issue of such a spectacular range. The South Asian countries need to trust each other more, they need to understand that in a global world a State can progress only if the others around it are also progressing. Therefore, mutual assistance and mutual respect is a major pre requisite for building up a common regional mechanism for human rights culture in South Asia. This view has been widely supported by South Asian thinkers as well from time to.

The view that SAARC should no more shy away from formal human rights set up is most strongly supported by the views of South Asian as well as international scholars. Several writers have been hinting upon SAARC’s role in human rights promotion and protection in the region, lately and their expectation of SAARC is highly justified. SAARC needs to be individual oriented. This era is the great era of globalization. The line between the ruler and the ruled has got even more
blurred. If South Asia wants to use its potential value in the globalized world it has to take human rights issues seriously. And since SAARC is the only regional organization representing this region it must or better say ‘has to’ take up human rights as a clear agenda in this decade. The argument of having human rights arrangement within the framework of SAARC is found to be weak and has faced great criticism due to poor human rights record of the member States mentioned above. However, way back in 1985 the very emergence of SAARC proved the then critics wrong who were of the opinion that no such organization can survive the hostile conditions in South Asia. And South Asian scholars are sure that SAARC can repeat it. The beauty of SAARC is that it is a unique organization which was conceived in turbulent times of South Asia and which could cross over mutual distrust and anticipation of the members.

5.7 Conclusion

South Asian countries should try to recognize certain common areas of interest where they can work together for the protection of their own interests. The region needs such a human rights mechanism which, in addition to following the international norms, also meets the region’s cultural and regional requirements. In the era of globalization, when the multi-national companies are making their ways in the developing countries, the vulnerable nations are becoming more vulnerable ones. The Asian countries have their own peculiar problems which require peculiar solutions which are neither alien to South Asian culture nor are prejudiced against it.

It is rather important to mention in the end that building up a regional mechanism for promotion and protection of human rights is not a contradiction to the universal human rights norms rather it should be considered a sincere complement. As I tried to convey in my earlier chapter that the regional human rights mechanisms drew a lot from the UN’s Documents and procedures. The Older regional human rights systems again became sources for the newer ones. To keep this chain going the Chapter ahead is an attempt on my part to draw lessons from the existing regional human rights mechanisms and to explore the South Asian prospects.

Heads of State of Government Meeting

Ministerial Meeting

Committee on Economic Cooperation (COEC)

Council of Ministers Foreign Ministers

Other Committees

Standing Committee

Programming Committee

Action Committee

Regional Committee

Technical Committee

Secretary General SAARC Secretariat KATHMANDU

SAARC Chambers of Committee and Industry

Directors

SAARC NGOs’

General Services Staff

Chart 1: Source: SAARC Secretariat and Declarations