CHAPTER SEVEN

THE PROPOSED ROAD MAP FOR THE ESTABLISHMENT OF THE SOUTH ASIAN HUMAN RIGHTS MECHANISM
CHAPTER SEVEN

THE PROPOSED ROAD MAP FOR THE ESTABLISHMENT OF THE
SOUTH ASIAN HUMAN RIGHTS MECHANISM

7.1 Introductory

In this concluding chapter, it is very important to recapitulate the movement of ideas towards this final chapter of the thesis. In the first chapter, I have discussed that this doctoral work revolves around the universal concept of human rights, regional mechanisms of human rights and that this research is dedicated to explore the possibility of one such mechanism in the South Asian region. In the same chapter, the research methodology and the review of the existing literature was also discussed wherein the research gaps were appropriately highlighted to strengthen the relevance of this doctoral work. While preparing the review of literature I found that there was a lot of literature available on South Asia, the SAARC and human rights, however, the literature available on the three aspects combined was quite less. In the second and the third chapters, I used the extensively available literature on international and regional human rights mechanisms and focused on the ideas that could be used later in the chapters on South Asia and the SAARC.

In the third chapter specifically, I highlighted the unique features of each one of the regional human rights mechanisms and also tried to highlight their exclusive features which made them different as per their regional demands. I had to pick up the scattered ideas of similarities and dissimilarities between these regional mechanisms in order to build up a case in favour of South Asia and the SAARC and to prove their potential to establish a regional human rights mechanism for this sub-region of Asia.

In the fourth chapter of my thesis, my sole effort was to apply the basic features of a regional human rights mechanism in case of South East Asia where a unique human rights system has already been established by the ASEAN. It was done to
establish an inductive-deductive relation of my idea that the general ideas behind the mergence of regional human rights system in the non-Asian regions are seen in South East Asia as well. At the same time the evolution of human rights mechanism need not exactly be the same as it has been for the western regions. In the fifth chapter, I discussed South Asia as a region and human rights related challenges of this region. In the same chapter I elaborated the organisational structure of the SAARC as this is the only organization representing this region. The human rights related initiatives of the SAARC were also discussed in this very chapter.

While discussing these efforts, I tried to draw a correlation between SAARC and its counterparts at International level and also was compared with other regional organizations. The purpose of this kind of comparison was to establish the idea that there are certain similarities of structure and of functions between the SAARC and the other similar bodies like the United Nations, the Council of Europe, the Organisation of American States, the African Union, the League of Arab States and the Association of South East Asian Nations, which primarily focus on human rights. In order to do such a comparison, I have tried to derive a number of similarities between these established regional organizations and the SAARC. For the purpose, I have used primary sources and documents like the Charters and the treaties of these organizations and have attempted a comparison with a futuristic approach, mentioning that the SAARC organs can also perform such roles as their counterparts in other regions.

The sixth chapter of the thesis has great relevance to this study in general and to the concluding chapter in particular, as it revolves around the possible inspirations and lessons for the SAARC and South Asia from the various stages of international human rights regime under the UN and also regional human rights mechanisms under the other regional organizations. This chapter is exploratory in nature as it brings South Asia and the other regions on a comparable platform which has so far been a very less researched area of research studies related to the South Asian region.

For example, I compared the office of the Council of Ministers of the SAARC with its counterpart at the Council of Europe. As another example, I have compared the SAARC Charter with that of African Charter of Human and
Peoples’ Rights. While doing this comparison I found that the word ‘People’s in the SAARC Charter has not been used or interpreted as the word ‘Peoples’ in the African Charter of Human and Peoples’ Rights. The latter uses the word for providing for group rights of the peoples’ as human rights which is not the case for the SAARC.

The reason behind my comparison between various organs and provisions in the SAARC set up with the other human rights organizations is to emphasise that the SAARC has certain provisions, which can be used as a basis to establish a human rights regime in the region. In this concluding chapter, therefore, I am proposing a roadmap or a blue print for a South Asian human rights mechanism.

Before I explain my proposal, I would like to mention that all the stages of the proposed South Asian human rights regime are based on some existing provisions or some South Asian initiatives which are already there, however, in their embryonic stage. To cite one such example, Article IV of the Charter of the SAARC deals with the Council of Ministers of the organization and has important relevance for this study. Article 1 in its Paras (a) - (e) provides for the following functions of the Council of Ministers of the SAARC which are mentioned as below:

- Formulation of the policies of the ASSOCIATION;
- Review of the progress of cooperation under the ASSOCIATION;
- Decision on new areas of cooperation;
- Establishment of additional mechanism under the association as deemed Necessary; and
- Decision on other matters of general interest to the ASSOCIATION.

In this particular provision of the Charter of the SAARC, I see a ray of hope for the proposal of human rights mechanism for the region. This provision clearly mentions that the SAARC is open to ‘new areas of cooperation’ and may also launch ‘additional mechanism’ under the SAARC which hints that at least at the constitutional level, there is a scope for a human rights system to be proposed making use of such provisions.

The Charter, in its Article VI Para (2)(a) provides that the Technical Committees
of SAARC may help in determining ‘the potential and the scope of regional cooperation in agreed areas’, hence, it is another support to the point made just above. In this way I have tried to keep the link between what I am proposing and the basis on which I am proposing.

To have a new regional human rights mechanism for the South Asian region is definitely not going to be a day’s work. That is why I have divided my proposal into three stages or phases. The first phase of the proposed mechanism has been kept as the gestation period for the idea for a human rights mechanism to settle in the South Asian society. In the second phase, this general understanding and acceptance of a regional human rights mechanism will further be consolidated by way of non binding documents on human rights for the region. Along with this, some of the institutions may also come up to keep guard of the implementation of these non binding documents. In the light of these documents and institutions, in the third phase, the treaty based documents on human rights may be introduced for the region along with formal institutions for implementation. The proposed phases along with the steps to be undertaken have been discussed in the following paragraphs.

7.2 The Proposed South Asian Group of Civil Society

The first stage of my proposal deals with the non-political human rights movement in South Asia. In the first step of this first stage of the proposal, I propose that complete focus should be on the role of the NGOs of the region. As I have mentioned in the third chapter, the role of NGOs has been crucial in the development of regional human rights regimes in Africa and in the South East Asia. Role of NGOs have also contributed in the well established human rights systems of the Europe and America. This stage of the proposal is highly inspired by the crucial and decisive role these non-governmental organisations can play.

Amidst the weak political will to bring up human rights on the agenda of the SAARC and in the presence of various inter-State conflicts, NGOs can play an influential role in bringing up human rights issues in South Asia. As I have elaborated in the fourth chapter also, the States in the South Asian region are generally hesitant to discuss human rights issues in open as they take it as an
abridgement of their sovereignty. Also, further, there is a mutual distrust amongst the States and in such a situation, allegations of human rights violations may become another political tool to tarnish the image of other countries in the world.

Another important factor which plays a role of obstacle in building a pro human rights environment in the region is the variety of regimes in the member countries. For example, a democratic country would define and handle human rights matters in one way whereas a military dictatorship would do it in a completely different way. There is therefore, a lack of consensus over the matter.

Despite all these problems, the region cannot, however, afford to remain indifferent to the human rights matters. If not a fully functional system, there should atleast be some effort to prepare a plinth for it. Therefore, in my opinion, the South Asian civil society may be designated to do the ground work.

South Asia has a number of regional NGOs working for the cause of human rights. These, inter alia, include the South Asian Human Rights Documentation Center and the South Asia Forum for Human Rights, to name a few. These NGOs primarily work for the promotion of the concept of human rights and also highlight the weakness of the South Asian States in this matter. For example, in the year 2000, a regional NGO\(^1\) took initiative to draft a Declaration on Human Rights called the Neemrana Declaration which was later renamed as South Asians for Human Rights (SAHR).

The Neemrana Convention\(^2\) was lead by Mr. I.K. Gujral, the former Prime Minister of India with Dr. Kamal Hossain from Bangladesh, Dr. Devendra Raj Panday from Nepal, Ms. Radhika Coomaraswamy from Sri Lanka and Mrs. Asma Jahangir from Pakistan as participants who discussed the prospects of a regional human rights system.\(^3\) The delegates represented the creditable NGOs of the region and included jurists, scholars, academicians, public figures, trade unionists and media persons etc. etc. At the end of the conference, the Neemrana Declaration was adopted. The Declaration referred to the International documents

---


\(^2\) The Convention was held at the Neemrana Fort, Rajasthan, India on 21-22 July 2000. For further details, see: http://www.Southasianrights.org. Visited on 18 May 2011.

\(^3\) id.
of human rights re-emphasising the link between the international, regional and sub-regional initiatives on human rights. One of the major features of the Neemrana Declaration was that nature of the rights mentioned in this document was primarily economic and social as the excerpts from the declaration below also mention:

Recognising the grave human rights situation in South Asia, with its terrible legacy of persistent poverty, deprivation, illiteracy, inequality, caste and social hierarchy, discrimination against women and exploitation of children, itself further aggravated by authoritarian, militarist and sectarian tendencies amidst violence and state repression;

Concerned at the encroachment on human rights through unequal globalisation and pursuit of elitist domestic policies which harm the interests of the working people and their right to survival, security and a life with dignity

Acknowledging that human rights violations in one country often spill over into the other countries in the region and potentially generate bilateral/regional tensions and hostility, thus threatening peace.

The Declaration clearly mentioned the social, economic and political problems of the region which obstruct the way of a human rights system in the region. It also spelled out the regional tensions erupting out of absence of a human rights monitoring body in the region.

In other words, it was observed that till the time the South Asian region does not have its own human rights monitoring body, it is an open opportunity for all the countries in the region to blame other countries for human rights violations. And because there is no regional agency to check its validity, such false allegations will increase the tension in the region and will also blight the scope of cooperation among the member nations.

The Neemrana Declaration also warned the region against its unpreparedness for the challenges of globalization. In the era of investments and outsourcing, South Asia has a bright prospect being a huge market of products as well as for being rich in human resource. However, in order to be benefitted from the merits of globalization, the region needs to be respectful to human life and its basic needs. The NGOs of the region expressed in this Declaration that no country would invest in a country which is poor in governance and has brutal laws or where human life has no respect attached to it.

\(^4\) *id.*
This Declaration also mentioned that the representatives from all the South Asian countries participating in the conference agree to establish a ‘voluntary, democratic, people’s organisation under the title ‘South Asians for Human Rights’ which would work for certain human rights related objectives like:

- To foster the concept of multiple South Asian identities by enabling people to realise their ideals and aspirations for peace, democracy, secularism and human security, while promoting pluralism in approaches towards social, political, economic and cultural development of different communities, ethnic, linguistic, religious and other groups;
- Uniform enjoyment of human rights;
- To monitor and resist the violation of human rights by state authorities and non-state elements;
- To oppose usurpation of people’s sovereign power and derogation of human rights by state terrorism, religious fanaticism, communalism, militarisation and nuclearisation, and to fight for a nuclear weapons-free South Asia as a step towards a world free of mass destruction;
- To resist and remove all forms of crime including traffic in women and children;
- To maintain mutually beneficial relations with international agencies such as the UN and SAARC and to promote dialogue and mutual cooperation.\(^5\)

In the last objective mentioned above, it is clearly stated that the NGOs of the region also believe that in order to promote human rights in the region, they would have to work with international organizations like the UN as well as regional organization, that is, the SAARC. This idea is also being emphasized in this study.

In addition to these regional NGOs, there are a number of Asian NGOs which keep vigil over the human rights status in South Asia like APF, ACHR etc. etc. At the end, a number of International NGOs like Amnesty International, ICRC, CHRI etc. etc. focus on the issues of South Asia pertaining to human rights. I also

\(^5\) *id.*
propose that in the first stage, the South Asian NGOs should work in tandem with other regional and international NGOs to develop an environment conducive for human rights arrangements and to popularize the idea of having a South Asian regional mechanism for human rights to gather favourable global public opinion.

Since the proposed South Asian Group of Civil Society is apolitical and non-governmental, the hesitation of the countries to let this group to become functional would be less. Also, it is proposed that this group be kept outside the realm of the SAARC so that it can function more independently and does not pose unnecessary doubts in the minds of the SAARC members.

Some leading NGOs of the region and of international level can be made permanent members and some periodic members can also be included in the organization of this group. The permanent members can be kept responsible to pool resources to meet the expenses of this network. This group would focus on spreading awareness among people about their human rights and the policies of the States. The group should have a Secretariat which works round the year and should be based in a more neutral and peaceful State of SAARC, so that it can function away from the ambitious power politics of a big State and also to win the trust of the small States.

This group may organize workshops and conferences from time to time. In this case again the NGOs may work together with the NGOs from outside South Asia, by collaborating with them to begin with such activities in the region. This group can also prepare a report of the region and its human rights compliance and submit these to every SAARC country.

In the due course of time, the group may also introduce individual as well as group complaints at national offices of the NGOs. If the matter is of regional concern, then a report on the same issue may be submitted to the SAARC Secretariat to gage attention of the organization in addition to the concerned member States. The purpose of introducing group complaints mechanism is to cater to the Asian preference towards second generation human rights which are primarily group or community rights. Further, it would justify the use of word ‘Peoples’ in the SAARC Charter because the group rights are peoples rights who suffer from some human rights problem as a group. This step is inspired by the
European group complaint system which has been introduced for the Social Charter.

Lastly and perhaps most importantly, if group complaints are introduced, it may facilitate the development of the mechanism for the South Asian Social Charter which has been adopted in 2004, which has been discussed in chapter six of this study. As a matter of fact the group complaints system has been included in the Europe for the European Social Charter which I have used in my proposal for South Asian Human rights System.

At this stage, I have tried to keep the role and functions of the group more informal, non-political and non-challenging.

7.2.1 The Proposed South Asian Commission of Human Rights

The second step in the first phase of the proposal for the establishment of the Human Rights Mechanism for the region would be that the South Asian NGOs should collaborate with other regional and international NGOs to form a South Asian Commission of Human Rights. Such initiative has been successful under the ASEAN and similar initiatives can be expected to be successful in South Asia.

There are proposed to be eight members of this proposed Commission, each representing the NGOs of the parent State. I also propose that there should be advisers or shadow members who can be retired government officials to guide this proposed commission about the rules and procedures of the State’s inner administrative culture. These members may meet bi-annually or whenever there is some pressing need. The tenure of the proposed Commission may be kept four years. A Chairperson of the proposed Commission may be appointed on rotation basis for six months so that every State gets its Chairperson in one term. Like the UN, the Commission may launch some fact finding missions and also publish reports thereafter. The proposed Commission may also be entrusted with the power to issue recommendations to particular States on particular matter of human rights concern.

The Commission should also publish regularly to highlight the problems, analysis, critiques and to bring forth the efforts to address human rights problems as is done by APF, SAHRDC etc. It may be appropriate to mention here that from 2011 SAARC LAW, the branch of the SAARC has established a research and
publication centre to promote research on South Asia. The Chairperson of the proposed Commission may also be invited address the Parliaments of the SAARC States to make the legislators and the people of the region aware of the Commission’s initiatives and findings.

7.2.2 The Proposed South Asian Network of National Human Rights Institutions

The third step of the first phase of my proposal is a proposal for establishment of a South Asian Network of National Human Rights Institutions. This stage is greatly inspired by the Paris Principles of the UN adopted in 1993. As per the Paris Principles, national institutions were not only to monitor the internal conditions of human rights of a country but also understood to be working with the regional organisations working for human rights. While doing this, the institution is supposed to perform the following responsibilities:

As per provision 3(d) of the Paris Principles the national institution is to contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence. And according to the provision 3(e), the national institution has to cooperate with the United Nations and any other organisation in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;

Under the Modes of Operation, the Paris Principles explain the framework of operation of the NHRI s under provision 6(e) that is, it has to establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions.6 At this stage, I am taking support of this international document in two ways. Firstly, that this UN document emphasizes on the existence of regional organizations and probably keeps the regional set ups for human rights as the next step after the establishment of national institutions of human rights. The proposed Network of the NHRI s in South Asia will generally function as per mentioned in the first two

provisions cited above. And more particularly, it will execute the third provision, that is, 6(e) because in this proposed Network, the regional collaboration between the region’s NHRIs is projected.

Another inspiration for this stage is the initiatives of the APF as discussed in chapter five. Regionalisation of NHRIs has successfully been practiced in the Asia Pacific region and can be used in South Asia as well. This step of forming regional platform of South Asian NHRIs is not an unexplored and unthought-of area. In April 2008, the National Human Rights Commission of India invited all the NHRIs of the South Asian States to discuss a possibility of joint ventures in South Asia at the level of NHRIs.

Unlike the APF initiative, I suggest that there should be a provision to involve even the provincial or state level human rights institutions, and separate meetings may be held with these state level human rights commissions. Purpose behind this is to sensitise the lower level of monitoring of human rights within South Asian States and also to spread a regional approach of human rights to the deepest core. Along with this, I suggest that there should be a shadow report prepared by this network on the basis of the NGOs group of the region so that the real picture of the status of human rights can be seen. Such practice is in use at the UN also for the same purpose as has been just mentioned.

The meetings of the Network of NHRIs may take place annually but these meetings should not coincide with the meetings of other regional bodies. This is being proposed so that at one point of time the States are able to concentrate on one meeting and do not avoid to respond. As a lesson from the implementation mechanism of the European Social Charter, the members of this proposed Network should essentially follow the principle of ‘peer pressure’ rather than criticism. Such a principle is being proposed so that the members of this proposed South Asian Network should discuss the human rights related problems of other members without any inhibition of being criticized and condemned rather they should offer their help and assistance to solve such problems. This would create a congenial environment also and may also pave the way for open discussions and resolutions.

Regular workshops can also be conducted where NHRIs of the region share their
experiences and learn from others. Also, new techniques may be discussed to handle human rights issues. These meetings can be held in the member countries on rotation basis. The expenses of these meetings should be borne by the NHRI of the host country. This is being proposed for two reasons, first that the governments should be kept out of these arrangements in order to keep these efforts apolitical and secondly, if an NHRI is bearing the expenses then the unnecessary expenditure would be avoided.

Amongst the other functions of this proposed Network, there should be operations like fact finding, issuing recommendations to States, issuing comments on general themes of human rights of regional concerns. These activities will have different nature and scope as compared to similar activities proposed by the Commission by the region’s NGOs. That is because the fact finding by the country’s own NHRI would be taken more seriously by the governments and they can refute them. Secondly, such activities by the NHRI of a State would serve as official records to be used for reports submitted to the UN or other such bodies at global level. It is for similar purposes that I also suggest that the proposed network should publish annual reports on the general status of human rights and separate reports if some critical situation has emerged to the concern of the region. The proposed Network should promote research on regional human rights issues and steps taken in the direction of solving them because in case of South Asia I strongly believe that there is need for much more serious and dedicated research in highlighting the human rights initiatives of the region.

In the first phase, I have kept all the non binding and non political aspect of the proposed South Asian human rights system. The work in this phase is just to promote and consolidate the concept of universal human rights in the region and to strengthen the culture and approach towards human rights. In the second phase, however, there would be more South Asian character introduced to the approach. I am discussing the second phase in the following paragraphs.

7.3 The Proposed South Asian Declaration on Human Rights

The first step in the second phase should be adoption of a declaration on human rights. All the steps at this stage should be kept under the SAARC so that a regional aspect is added to the growing mechanism.
South Asia has a long association with International law since ancient times which continued in the medieval and the modern periods of the region, too.\textsuperscript{7} At present SAARC as the representative of the region is also upholding and contributing to the development of internal law.\textsuperscript{8} Fortunately for this study, I found that in all the SAARC Conventions, there has been a reference to the International Human Rights Conventions etc. and in the proposed South Asian Declaration on Human Rights, it is even more required to acknowledge these. As a matter of fact, in the year 2000, the Neemrana Declaration discussed and analysed mentioned above, seems quite close to what is being proposed as a South Asian Human Rights Declaration.

Since this proposal is for a sub-region of Asia, I would also suggest that in the Declaration, there should be reference to all the regional initiatives of this kind especially the Human Rights Declarations of America and Africa.

The SAARC Declaration on Human Rights should begin with reference to all the earlier works done by the SAARC in the direction of human rights issues, for example, the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution; the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia; the SAARC Regional Convention on Suppression of Terrorism and its Additional Protocol; and other agreements like the SAARC Agreement on Establishment of the SAARC Food Bank; and SAARC Agreement on SAARC Free Trade Area (SAFTA); the South Asian Declaration on Overcrowding of Prisons, 2010; and the SAARC Charter of Democracy in 2011 etc.etc.\textsuperscript{9} So that the trajectory of human rights initiatives of this organization are also highlighted and brought under one umbrella.

Although the Declaration is proposed to be of non binding nature, even then there is proposed a body to take a vigil over its adherence by the SAARC members.


\textsuperscript{8} \textit{ibid.}, pp. 404-405.

\textsuperscript{9} For further details, see: Aditya Pandey, \textit{South Asia: Conflicts of South Asia}, Isha Books, Delhi, 2005, pp. 1-27.
This task may be assigned to the proposed South Asian Commission on Human Rights which was proposed in the first phase of this blue print for South Asian human rights system. This proposal of assigning dual task to the Commission has a reflection of the Inter-American system of human rights wherein the Commission for Human Rights was assigned dual role under the Declaration and the Convention. However, in this case, the dual role of the Commission is with respect to the role it plays under the region’s NGOs and the region’s Declaration. Another feature similar to the inter-American system as mentioned in the Article 45 of the Inter-American Convention on Human Rights can also be advised here. That is, the acceptance of the States to the jurisdiction of the Commission may be kept subject to declaration or separate acceptance of the States.\textsuperscript{10}

Considering that there are only eight countries as the members of the SAARC, the adoption of this Declaration may also be extended to the Observer countries of the SAARC in order to increase the scope of the document and also to facilitate interest of these countries in the region as well as the organization. Thirdly, such an extension of human rights accomplishments may also pave the path for collaborative ventures between the sub-regions and regions in future.

\textbf{7.3.1 The Proposed Amendments in the SAARC Charter}

In the second phase the movement for south Asian human rights mechanism may focus more on the involvement of SAARC. This is so because this regional organisation would be the ultimate level for this proposed mechanism. As it has been debated over a long time, the adoption of a Human Rights Declaration may also lead to the first amendment in the SAARC Charter. To avoid any inhibitions of the States, it can be done just to include the reference to the South Asian Declaration in the Charter of the SAARC. This reference in the Charter would give the needed respect for the human rights effort of the region. Such an inclusion in the Charter will also bring the South Asian Declaration in the category of other human rights declarations.

In addition to this such an inclusion would also benefit the stature of the SAARC

Charter and it would be considered as competent as the Charter of the UN, the Statute of the CoE, the Charter of OAS and the Charter of the African Union and the League of Arab States because all these Charters acknowledge the human rights declarations and have included some provisions on human rights of their own as well. Also such an inclusion would facilitate further growth of human rights institutions of regional level under SAARC.

Along with the amendment mentioning the South Asian Declaration of Human Rights, it also advised to mention the role of the Commission which is entrusted to keep an eye over the compliance of this Declaration by the States.

The very purpose of proposing this amendment is to give a human rights dimension to the SAARC Charter and also to leave an impression of human rights institutions in the document. Since there will be no binding role of the Commission or the Declaration the States are expected to be more receptive to this proposed amendment.

7.3.2 The Proposed Protocol to the Complaint Mechanism to the South Asian Social Charter, 2004

The South Asian Social Charter was adopted by the SAARC in 2004 and the nature of the rights mentioned in this Charter is social and economic. Also the nature of the rights included in this Charter is of collective nature. Although the Charter has been adopted by the SAARC, the implementation of the Charter is not kept at regional level. The National Coordination Committee of each state must look after the enforcement of the Charter. On the other hand, the Charter has been adopted by all the eight members. However, there is a dilemma regarding the South Asian Social Charter. Firstly, on one side, it is highly commendable that all the countries have adopted the Charter but on the other side, we realise that there is no regional body to enforce this Charter and the States are free to implement it on their own sweet will.

It is expected that due to the work done in the proposed first phase, it will be easier to make the SAARC States agree to further growth of the Social Charter by way of a Protocol. It is proposed that in the second phase of this proposal a Protocol to the South Asian Social Charter is introduced and be considered as an addition to the original Charter. It is proposed to introduce the complaint
mechanism through the Protocol to the South Asian Social Charter. Taking an inspiration from the Protocol on Collective Complaint Mechanism of the European Social Charter,\(^\text{11}\) I propose that the complaint mechanism of the South Asian Social Charter should also be of individual as well as collective in nature. To avoid any apprehensions of the States, the National Coordination Committee of the SAARC States, which are already functioning in the respective countries, can be entrusted with this job to draft the Protocol.

Collective complaints can be filed by a group of people or NGOs, due to this feature the groups of NGOs can be strengthened such that they would be able to fill complaint on behalf of any victim. I would like to mention here that in South Asia, collective complaint system is not new as the South Asian judiciary has been accepting such PILs in India. Further in this complaint mechanism, the States may be given an option to accept jurisdiction of some regional commission under the SAARC for such complaints or they want to keep it under their respective National Coordination Committee. This is proposed to cater to the doubts of the SAARC States. Secondly, the purpose of this movement for human rights for the region is to ensure those rights to the people, with or without separate national system of enforcement.

In addition to the role of the regional NGOs, the NHRIs can also play an important role in the implementation of the complaint system of the Social Charter. It will add to the routine roles of the national institutions, for example, making case studies and publishing reports and submitting it to the national legislatures etc. It is emphasized here that for South Asia enforcement of the Social Charter is very significant since by its coming into action, the SAARC will actually introduce its human rights mechanism and that too with the economic, social and group rights. Moreover this Charter is already there in the system, hence, it will take lesser time to bring it into action as compared to drafting a new document of its nature. I would like to mention here that it is not necessary that all the regional human rights systems need not begin with the civil and political rights as a first step. In case of South Asia, it is better if the regime

begins with the economic and social rights as these are more acceptable to the SAARC countries.

7.4 The Proposed South Asian Parliament

The introduction of a South Asian Parliament is another important step towards the establishment of a South Asian human rights mechanism since this organ is seen to be having immense potential to serve the region in a number of ways. The idea of having regional legislative body for Asia has gained momentum in recent years. For example in 2007, the Second Plenary of the Asian Parliamentary Assembly adopted the Charter of the Asian Parliamentary Assembly (APA) at Tehran. The scope of this Parliamentary body is the whole of Asia, including South Asia. Therefore, we can draw this conclusion from such a development that if such a body can be planned at regional level, then it has even more chances to work successfully at the sub-regional level. For the sub region of South Asia also, several political leaders have also expressed their views in favour of South Asian Parliament.

During the fifth Conference of the SAARC Speakers and Parliamentarians on 11 July 2011, Fehmida Mirza, the then Speaker of the National Assembly of Pakistan, also expressed that a regional Parliament on the lines of the European Parliament should be planned for South Asia as well.

According to S.D. Muni as mentioned in his article entitled “South Asian Parliament”, the concept of South Asian Parliament was proposed in 1995 during the Tenth Anniversary of the SAARC. From time to time, a lot of ideas have been expressed from different aspects and angles in favour of having a regional legislative body as South Asian Parliament. Although there has not been much development in this regard, however, it definitely shows that there are several

bases to this idea to be considered. I am presenting some of the ideas ahead.

M.L. Sondhi was another believer of this institution and he mentioned in his article the principles on which the South Asian Parliament may be based as follows:

1) that it is not dominated by any single nation-state in South Asia, (2) that it promotes the shared management of economic, technological, developmental, and environmental problems on an equitable basis; (3) that in dealing with political and security issues the operational norms of partnership and common security are adhered to; (4) that political trust and cooperation are fostered by legislative conflict resolution; and (5) that it unreservedly recognises the right to identity at local, national and regional levels and will foster solution of social conflicts through mutual understanding and non-violent means.¹⁶

The idea of a regional parliament had already been mooted in early 1990s which was later worked upon by the region’s NGOs as well. The South Asia Free Media Association (SAFMA) was one such regional level NGO. The first initiative from the civil society towards the idea of a South Asian Parliament was imitated by this NGO, which supports the proposal of the first phase of this study. A Two-Day Conclave of Parliamentarians organised by the South Asia Free Media Association (SAFMA) was held under the slogan of "Towards South Asian Unity". During the conference which was held in June 2007,¹⁷ there were detailed discussions on how to set up a South Asian Parliamentary Commission.

The conference concluded with the adoption of the Simla Declaration which proposed the roadmap for better regional cooperation among the SAARC countries. The conference proposed creation of an Intra-Parliamentary Union in South Asia¹⁸ and proposed that the preliminary work can be done by a commission consisting of Parliamentarians from all eight member countries other than two experts under the patron-ship of the Indian Lok Sabha Speaker Somnath


A similar idea of patron ship was also mentioned by M.L. Sondhi in his proposed organisation of the South Asian Parliament. According to him, this regional body should be a mixture of consensus and election. For this he proposed consensus based post of Secretary General who would be a political personality and would play the role of President of a Parliamentary system. Then he suggests a Speaker for the Parliament who would be elected by the members of the parliament.

Sondhi further proposes to have a Council of Ministers. He suggests that this office would evolve in two phases, in the first phase, the members of this Council of Ministers would be appointed by the States and later they would be elected by the members of the Parliament. He also proposed a Secretariat and a Committee system under the South Asian Parliament.

There have been views shared from Pakistan which favour such a regional platform. As per the proposals from Pakistan, ‘the SAP would first act as a deliberative body for discussing all vitally relevant issues of concern to South Asians.’

Having considered different views on South Asian Parliament, I think the institution should be an elected body with some seats for nominated members. The Members of the Parliaments of the SAARC countries may vote for them. The tenure of each member should be four years and a provision to call back a representative should be kept. This is mentioned with reference to the sensitive approach of the SAARC States. In case, some disturbance is caused due to any statement or act of a member of South Asian Parliament there should be a provision to cal back that member with immediate effect, so that the congenial environment of the regional Parliament is secured.

Membership of South Asian Parliament is a great concern to the scholars who envisage this institution because of the regions high population and diversity in

---

19 id.

sizes of the members. M.L. Sondhi in his article\(^1\) has proposed four hundred and forty members for the South Asian Parliament out of which he proposes one hundred and fifty members from India, seventy five each from Bangladesh and Pakistan, fifty from Nepal and Sri Lanka, twenty from Bhutan and Maldives on the basis of each country’s population count. He left out Afghanistan since at the time of this proposal Afghanistan was not a SAARC member.

My proposal for the South Asian Parliament would also be using the proposals already submitted by these eminent scholars in the field, however, with an addition. It is suggested that it is most advisable in South Asian Parliament the members of the parliament can be fixed as per the population and for nominated members, a fixed number can be fixed. The nominated members may be jurists, academicians, members of the civil society from the region who have done outstanding work in the region.

In case of voting rights, every country may be given one vote so that there is no apprehension of the fears of smaller States to be outnumbered by bigger members. And in case of a tie, the vote of the chairperson or the Speaker may be considered as the casting vote.

The Chair of the South Asian Parliament can be kept on rotation basis in an alphabetical order. The term of office may be for six months so that every State gets a chance to chair during the tenure of four years. The South Asian Parliament may be entrusted to prepare policies for the region’s welfare and submit to the State legislatures where the respective South Asian Parliament member can discuss the issue in detail.

At the SAARC Summits, the Chairperson should be invited to address the members. Since South Asia is full of young minds, the South Asian Parliament may invite interns from the student fraternity of South Asia to work in an environment beyond political boundary and to inculcate a South Asian character in our youth. The SAP would also be entrusted to work with other similar bodies

of other regions for example the European Parliament of the EU²² for its own
growth and for the growth of the whole region.

7.4.1 The Proposed South Asian Convention on Human Rights

In the third and the last phase of the South Asian Parliament, I propose a binding
Convention on Human rights for the region. This Convention has to be greatly
inspired by the Inter-American and the African Conventions since these
conventions included the balance between the civil and political as well as the
economic and social rights. Both the regions are culturally and politically diverse
even though they have been able to keep a balance between regional preferences
and respect for Universal human rights norms. SAARC has always been
acknowledging the universal norms of human rights in most of its Declarations,
therefore, this is not a problem at this stage. The drafting of the convention can
be given to the SAP with assistance from all the institutions working for human
rights in the region.

As I have mentioned in the previous chapters also, the South Asian Convention
need to address the regional spirit and sensitivities. Like the African documents,
the South Asian Convention must also be truly South Asian in essence and should
acknowledge all the cultures of South Asia within itself. The Convention may
introduce the complaint mechanism, but this could be kept under the respective
acceptance of the States.

The Commission proposed in the first phase of the proposal can further be
strengthened here as formal part of the human rights mechanism of the region.
The way the Inter-American Convention on Human Rights (I-ACHR) had done to
assign the Commission with dual role under the Declaration and the Convention
both. I must mention here that in case of South Asia, it must be taken care of that
the Commission does not become a political tool as happened in case of the
Council of Europe and as result it was taken over by the full time court.

²² For further details, see: Kishore Kant Bhargava, et.al., (eds.), Shaping South Asia’s Future: The Role
of Regional Cooperation, Vikas Publishing House, Delhi, 1995. Also, see: Kant Bhargava,
“The European Union, South Asia and Democracy in Development: Dialogue and
7.4.2 The Proposed South Asian Human Rights Court

Another important organ of any human rights system is the human rights court. In case of South Asia, I have purposely kept the Regional Court for Human Rights in the last stage of the proposal. The States of the region are extra cautious towards their Sovereign Status and thus would not be ready to submit to a regional court to decide on their human rights stances. Due to long impact of colonialism the region has a tendency to misinterpret cooperation with subjugation. It was to address these tendencies of the States that I planned a long and gradual way to come to the final stage of court.

The proposed Human Rights Court of South Asia should be seated in India primarily due to the country’s strong jurisdiction over the matters of human rights. However, in extreme circumstances, the seat of the court may be shifted for the greater cause of justice to be done. The South Asian Parliament can formulate a Committee of Jurists of the region and also invite some jurists of international eminence along with the representatives of the region’s NGOs, academicians etc. etc. to draft the rules of the court.

In the beginning, the Court may only be vested with the Advisory Jurisdiction and the Contentious Jurisdiction may be put into action later. Also, in case of Advisory Jurisdiction, any SAARC State or SARC agencies or even other regional agencies may seek the court’s advisory opinion.

By having introduced the first phase, I expect the NGOs to motivate the peoples of South Asia to understand the essence of human rights. And amongst these peoples are the administrators also. This region needs a re-orientation towards harmony and trust which is the main objective of the first phase. Later in the same phase, I have introduced the Human Rights Commission at NGOs level so that people get to know that human rights are not merely a tooth less theory. On the other hand, the work of the Commission is kept to be non binding on the States but it is expected to catch attention by the administrators by way of publications of reports etc. Also this stage was the hopeful inception of the idea of a court which the region might have in future when this Commission is functioning well.
7.5 Relevance of the Present Study for India

Every research needs a conducive environment and a promise for its realisation. For both these reasons it is highly relevant to conduct such a research in India. India is the most successful democracy of the region and one of the best in the world. Therefore, it would encourage such a study to the level of its culmination. India is the biggest country of South Asia and home to a variety of people and a variety of social, political, religious ideas. And the more important thing of this pluralist nature of this country is that there is always a peaceful course which is preferred to address the concerns and demands of the different sections of the society. Therefore, this country can play a role of a mini model to further work on this topic of South Asian human rights mechanism. In India a researcher may come to know the human rights related values of different religions, different sections of people which may help in greater understanding of the problem.

India has a huge landmass and it shares its boundaries with most of the SAARC members. Due to this India has common races, common ethnicities, and common religions with its neighbours. As a good regional feature this also has some welcomed repercussion as well. In recent times we have seen that India’s internal politics witnessed a setback over a matter which was between India and Sri Lanka and the matter was about the war crimes meted out against the civilian Tamils by the Sri lankan forces during their fight against the LTTE. The southern political party of India, the Dravid Munetra Kazagham (DMK) pulled out from the present Congress led UPA government at the centre.\(^{23}\) And after that the DMK also wanted India to abstain from the Commonwealth Heads of Government Meeting (CHOGM).\(^{24}\) The DMK wanted to pressurise the Indian government to take steps against Sri Lanka and to intervene in the critical situation. India though voted against Sri Lanka at the UN. The point which I am trying to draw here is


that if there is a regional body of South Asia who could take notice of such human rights related issues of the region then there is no need for such pressure tactics over any one particular country, as happened in case of the Tamil issue. Also, if there is a regional body addressing such matters then the relations between the countries may remain at bay and at better level. Therefore, regional human rights mechanism would sieve away the unnecessary interventions on part of individual countries and would also not affect their internal politics as discussed just above.

Another reason why this study is relevant for India is because India has a lot of lessons for the establishment of such a human rights system in the region. For example, the India has regional offices of most prominent international NGOs and hence they can be consulted over this promising work of a regional human rights mechanism. Secondly, India has rich literature of all periods which can be used to prepare a sound ground for such a proposal. India as mentioned before also is a vibrant and dynamic democracy. Therefore, in the further work on South Asian Parliament the history of Indian Parliament and the challenges it faces would be of great help to begin with a detailed study of this proposed organ of South Asian human rights mechanism.

The active role of the Indian judiciary in upholding of law and human rights in the country and also its awareness of regional concerns cannot be ignored while discussing the role of India in the establishment of a regional human rights mechanism. In 2011 Justice Ganguly, the Supreme Court Judge mentioned clearly in his address that, “...India has ‘inescapable reposibility’ to set up a Human Rights Convention for SAARC nationa and therefore must take the lead...”  

In recent time the hint of improved relations between India and Pakistan and to some extent India and China, India and Japan, India has emerged as a serious

---


26 India and China will study new ways to ease tensions on their ill-defined border after an army standoff in the Himalayas, Chinese Premier Li Keqiang said on Monday on his first official foreign trip. “China offers India a ‘handshake across the Himalayas’”. 20 May 2013. Available at: http://www.reuters.com/article/2013/05/20/us-india-china-idUSBRE94J03820130520. Visited on 1 June 2013.
player at international relations. Therefore, India would be listened to seriously if such an idea for a regional human rights mechanism emerges from India. Also, such a reputation in the region as well other regions would further help in general acceptace of the proposal of South Asian Human rights mechanism.

7.6 Conclusion

In the year 2007, S.D. Muni in his article entitled “India Must Think of South Asia 2020”, in which the author has mentioned the eminent place of South Asia in international relations where even the disinterested States cannot ignore its value. The author writes, “Behind the clouds of prevailing turmoil, there is a strong undercurrent of resilience among the South Asian people, and the international and regional communities have vested interest in ensuring the integrity and longevity of the South Asian States”. Taking inspiration from the writings like these and by observing that the region is moving fast towards democratic regimes, with Sri Lanka’s win over LTTE, and same expectation from the Afghanistan after the death of Osama Bin Laden, I am sure South Asia will achieve its goals even before 2020 as the author has perhaps rightly expressed.

While proposing the human rights system for South Asia, no scholar can undermine the importance of the governments in the region’s growth and prosperity. It is inevitable to mention that in South Asia, India has a special role to play. She must work to improve its relations with the south Asian countries in order to improve the region’s status in the global matters.

Throughout the writing of this thesis I have kept my belief in the possibility of a stronger, united and human rights friendly South Asia despite all odd literature I came across. And this is my first small step in the direction of contributing to this greater cause. At the time when I was daring to dream the undreamt, I have taken care of the fact that almost all of my ideas have a kind of umbilical relationship with the scattered yet similar ideas expressed by the scholars, intellectuals and experts on South Asia which I collected, interpreted and used in defense of my


ideas. I am thankful to each and every person whose idea I have used in this thesis.

I cannot conclude without mentioning the contribution of my learned supervisors Professor Dr. Gurjeet Singh and Mrs. (Dr.) Surinder K. Shukla who have encouraged, inspired and groomed me in all these years of this serious task. This study could not have been the way it is without their guidance.

My doctoral study is not just my work it has equally been contributed to by my family and my friends who respected my research work.

I believe in Almighty and I am thankful to Him for having given me direction to choose this doctoral topic and keeping my faith in my topic which only grew stronger with each chapter I wrote. And I pray to the Him to give me strength to follow my dream of having a South Asian Human Rights Mechanism even after this thesis is over.

I hope this study would be of some relevance to the region and to the disciplines it is based on.