CHAPTER ONE

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1.1 Introductory

Today the world has a well knit system of human rights monitoring and implementation at international, regional and national levels. This multi-level system of human rights regime has evolved over a period of time and is still growing. For example, human rights monitoring system of the United Nations (UN). It was the first one to take up the cause of promotion and protection of human rights at global level, however, this system was non-binding in nature. By the year 1950, a binding mechanism to implement human rights at regional level was established in Europe. This was followed by establishment of the Inter-American system in 1969 for American region. In 1981, the African human rights system was established under the African Union. Later in 2004, the Arab human rights regime came up under the aegis of the League of Arab States.

This doctoral study revolves around the various human rights mechanisms working at the international as well as the regional level and to propose a new sub-regional level of human rights mechanism for South Asia. To be able to do so the study has incorporated the political aspects of these human rights regimes, for example, that how these human rights mechanisms work according to the regional dynamics and regional organisations. In this study I have tried to trace the regional preferences regarding human rights to the emergence of regional human rights systems. For example, regional preference for the first or the second generation human rights, priority for individual or group rights, role of the human rights courts etc. etc. The study has also highlighted the balance between the universal and region approaches towards human rights.

While I was following the regional trends of these human rights regimes one of my focus areas was to study the Asian initiatives of similar nature, no matter at
how nascent stage these were. I found one good feature and one bad feature while looking for Asian efforts.

The good thing was that in South East Asia there is a human rights system working in its own unique way. The bad thing was that there was no such effort being made for South Asia. Having identified that South Asia is a region where there is a need for an initiative to establish a mechanism for human rights at a sub-regional level, this study attempted to explore a new dimension of implementation of human rights in the region of South Asia. The present research has been an attempt to contribute to the pyramidal system of human rights protection. Besides this the study has also tried to highlight the potential of South Asia and of the South Asian Association for Regional Cooperation (SAARC) and to appreciate the initiatives of this organisation to address problems related to human rights prevailing in the region.

The present research has attempted to bring out the efforts of various regions to promote and protect human rights. Similar efforts of the Asian region have been studied along with the initiatives of the South Asian sub-region. After having done a comparative analysis, a new mechanism for South Asia has been proposed.

1.2 Genesis of the Research Problem

In the wake of self-redemption, the world awakened to the importance of human dignity and human rights after the Second World War. The UN came up with a Universal Declaration on Human Rights (UDHR) in the year 1948 and had plans to make the implementation of human rights enforceable by way of human rights treaties. At the same time, the regions like Europe and America began to gradually move towards having their own regional human rights systems. These regional initiatives were essentially influenced by the United Nations’ efforts to draft an International Bill of Human Rights which was planned to be a binding document. The UN started working on this International Bill of Human Rights in 1946, and finalised the drafts by the year 1966. Thus the journey of the UN from a non binding mechanism to a binding one took almost two decades.

Fortunately, the regional developments proved to be faster. In May 1948, the Organisation of American States (OAS) held its Ninth International Conference of American States and proclaimed the American Declaration of the Rights and
Duties of Man, which was a step in the direction of establishing regional human rights mechanism. Hence, the American regional declaration for human rights preceded the Declaration of the United Nations by a few months time. In the same month, that is, in May 1948, in Europe, the Congress of the European Movement met in the Hague\(^1\) and called for proposals for a European Charter of Human Rights\(^2\).

Considering these regional developments as positive ones, the UN, through an *ad hoc* study group, considered creating and promoting regional human rights regimes on its own. However, it ultimately the UN study group concluded that the member States themselves bore the responsibility for forming regional human rights systems and in 1977, via the Resolution 32/127, the UN General Assembly asked the States those were not belonging to regional human rights regimes “to consider agreements with a view to the establishment within their respective regions of suitable regional machinery for the promotion and protection of human rights.” In a way it may be said that this study is in accordance to this UN Resolution since this study also puts forward the idea that the South Asian States must also give a serious consideration to its own human rights regime.

Shortly after the UN Resolution of the year 1977, in Africa, in 1979, the Assembly of Heads of State and Government (AHSG) of the Organization of African Unity (OAU) called on the Secretary General of the OAU to draft an “African Charter on Human and Peoples’ Rights”. In 1981, another regional mechanism was added to the existing two, and that was the African mechanism. Quite recently in 2008, the League of Arab States (LAS) also established the Arab mechanism of human rights. Therefore, today we have four human rights mechanisms working at regional level for the promotion and protection of human rights.

\(^1\) The origins of the European Movement date back to July 1947, at a time when the cause of a United Europe was being championed by notables such as Winston Churchill and Duncan Sandys in the form of the Anglo-French United European Movement. The European Movement was formally created on the 25th October 1948, when the Joint International Committee for European Unity decided to change its name. For more details, see: http://www. European movement. eu/ index. php? id= 6788. Visited on 20 July 2010.

It is important to mention here that the emergence of regional human rights mechanism should not be seen as a break-away from the universal human rights approach. The issue is not ‘regionalism versus universalism’, it is instead ‘regionalism within universalism’. As this development has not only been acknowledged but has also been promoted by the UN. Role of regional arrangements in the promotion and protection of human rights has often been supported by the argument that in a region, governments are more likely to be influenced by actions and representation of their neighbours. As Leary has been quoted in Hidetisho Hashimoto’s *The Prospects for a Regional Human Rights Mechanisms in East Asia*, that the most effective human rights implementation systems are regional arrangements because governments are more likely to agree to regional machinery for supervision where cultural, legal and intellectual traditions are similar.

I have endeavoured to introduce the existing regional human rights systems in the paragraphs ahead. These mechanisms have been discussed at length in third chapter of the present doctoral thesis. Since these regional systems are plinth of this study, I have picked up threads from these systems to weave the proposal for a new mechanism for South Asia, which was the primary purpose of my doctoral research.

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1.3 The Existing Regional Systems for Protection of Human Rights

As mentioned above, the Europe, the Americas, the Africa and the Arab region - have their own systems for the protection of human rights. The legal foundation of each one of these regional mechanisms is a general human rights treaty, which in the first place, recognizes a wide range of human rights, and in the second place, creates its own monitoring or enforcement body or bodies, to determine whether human rights violations have actually occurred and in case they have then these huma rights bodies have competence to take action against the perpetrator. There is another politico-legal factor being such regional mechanisms of human rights and that is the supra national nature of the regional organisations under which these human rights systems run. A supra-national nature of a regional organisation means that the decisions of this organisation are binding on the member States and therefore, the human rights commission which takes decisions that are binding for the member States. This feature makes them even more effective than the UN’s system of human rights monitoring.

As another fundamental feature of these regional mechanisms, in all the three of these regions, the human rights systems operate under the auspices of a regional organization which has a larger scope of action and which also has many other objectives which are not directly related to human rights.\(^7\) Having mentioned some of the common features of the regional mechanisms for human rights a brief overview of the existing regional human rights mechanisms has been given ahead.

As mentioned above the American region came up with the first regional human rights declaration, however, the Europe was the first region to have introduced a ‘treaty based’ regional system for promotion and protection of human rights\(^8\) under the auspices of the Council of Europe (CoE).\(^9\) It may be appropriate to point out here that the general human rights system of Europe is governed by the European Human Rights and Fundamental Convention for the Protection of

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Human Rights and Fundamental Freedoms, 1950 (popularly known as the European Convention), the subsequent Protocols, a Social Charter and its Protocols. Almost all the contracting States have incorporated the Convention into their municipal laws. There are two main organs of the European mechanism, the European Commission on Human Rights and the European Court of Human Rights.

The human rights system in the American region operates under the auspices of the Organisation of American States (OAS). It is based primarily on the Inter-American Convention on Human Rights of 1969 (popularly known as the American Convention), and also on the American Declaration on the rights and Duties of Man of 1948 (popularly known as the American Declaration). The enforcement of human rights rests with the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.¹⁰

The African human rights system¹¹ under the African Unity (AU) is based on the African Charter on Human and Peoples’ Rights, (ACHPR) 1981. This Charter is unique and depicts the African spirit¹² in its provisions as discussed ahead in this study. All the members of the AU have ratified the ACHPR. The enforcement mechanism of the African Charter rests with the African Commission on Human and Peoples’ Rights. The system also provides for an African Court of Human Rights.

The League of Arab States is the oldest international organisation.¹³ Founded in

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Cairo in 1945, the establishment of this organisation precedes the establishment of the United Nations. The Arab Charter on Human Rights was drafted in 2004 and was adopted in 2008. Being the youngest treaty based mechanism for human rights the Arab system is still evolving. However, the Islamist aspect of the Charter makes it unique as well relevant for the South Asian perspective because the region is inhabited by a large number of Muslim populations. By analysing the Arab Charter, I have certainly got some direction for proposing a new mechanism for a multi religious region like South Asia.

Despite being the largest region of all, Asia is yet to have any such human rights mechanism. From time to time, there have been voices from some of the prominent scholars and intellectuals that there should be some initiative towards such a mechanism for Asia also. It was due to all these voices raised in favour of human rights of the region that an Asian Human Rights Charter was adopted by Non-Governmental Organisations (NGOs) in Kwangju, South Korea on 17 May 1998. Although the Charter was considered to be a landmark development in the field of human rights in Asia, however, there are some striking weak points of the Charter especially when compared to the human rights efforts of the other regions. Firstly, it is non-governmental in nature hence the States are completely out of its purview. Secondly, there is no regional organisation to make it function as in case of other regional human rights systems. Moreover, for a diverse and huge region like Asia it is more desirable and logical to have a sub-regional mechanism for human rights, as it has been done in other regions as well. I have discussed this in the third chapter of the thesis.

1.4 The Human Rights Concerns of South Asia

In continuation to the discussion above, I would now like to discuss the sub-regions of Asia, particularly the South-east and South Asia. South East Asia was important for this study since there has already been an attempt in this part of Asia to establish a human rights regime under the aegis of the Association of South East Asian Nations (ASEAN). Presence of such a regional system within

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Asia was a very important point of reference for my study because on the basis of this precedent I could strengthen the idea that a sub-regional mechanism is possible in Asia, and I could direct this argument in favour of a South Asia. I have discussed the human rights initiatives of South-East Asia in the fourth chapter of the thesis. After having discussed the South-East Asia, I have introduced the sub-region of South Asia in chapter five. I am presenting a cursory overview of the region ahead and have mentioned the recent status of problems in these countries in the main chapter on South Asia.

South Asia is represented by a regional organisation named as the South Asian Association for Regional Cooperation (SAARC). Afghanistan, Bangladesh, Bhutan, India, Nepal, Pakistan and Sri Lanka are its members. Most of these eight SAARC countries share a colonial legacy of the foreign rule. Due to the long colonial exploitation, almost all the South Asian societies face problems like poverty, illiteracy, unemployment, violence and other social evils like discrimination against women, human trafficking and so on. According to a U.S. survey, in South Asia, there are several common problems of the region e.g. sectarian tensions, home grown and imported terrorist groups, extremism, pervasive corruption and ineffective legal system. Due to all these problems, people of these countries face challenges to their human rights every day.

A brief overview of the individual countries of South Asia regarding the status of human rights in their respective territories is given below:

According to some scholars in Afghanistan the concept of human rights is very weak, particularly of human rights of women. Some scholars have even mentioned that human trafficking is a 'built in' cultural feature. In addition to

17 Afghanistan was included as the eighth member in the Fourteenth Summit of the South Asian Association for Regional Cooperation (SAARC) held in New Delhi, India on April 3-4, 2007.
this the country faces a lot of political turmoil at the hands of Talibans. Bangladesh has a history of the military rule and the government has been known to suppress rights of the indigenous people. Violence against minorities and refugee problems have become common and a constant feature of this country.\textsuperscript{21}

In Bhutan, there are ethnic problems that have been a big reason for human rights violations in this country.\textsuperscript{22}

Human rights problems are no less in India despite the fact that it is a strong and vibrant democracy. Traditional hierarchical social structure, ethnic and religious differences, secessionist movements and authorities’ attempts to repress them are all the reasons why human rights violations repeatedly occur here. Overbooked with population, this country also faces the problems of human trafficking, refugees, disappearances, violence against women\textsuperscript{23}, child labour, bonded labour and so on.\textsuperscript{24}

Non-independent judiciary has been the main weakness of the Maldivian State system according to the Asian Centre for Human rights (ACHR) report for the year 2008.\textsuperscript{25} In Nepal, the Maoists and Madhesi armed oppositions groups were responsible for severe human rights violations.\textsuperscript{26} The country faces instable political regime even till today and is vulnerable to pressures and ideological influences from outside the region, from countries like China.\textsuperscript{27} In Pakistan, the democratic values have failed to gain roots. Religious fanaticism, violence against women and derogation of rights of women and violence and unrest in general, are the most common features of the Pakistani society.\textsuperscript{28}

\begin{flushleft}
\textsuperscript{21} \textit{ibid}, pp. 1267-1309.
\textsuperscript{22} \textit{ibid}, pp. 1309-1328.
\textsuperscript{24} For further details, see: V.P. Srivastava, 2002, pp. 1328-1328.
\textsuperscript{25} \textit{ibid}. pp. 83-93.
\textsuperscript{26} \textit{ibid}. pp. 100-113.
\textsuperscript{28} For further details, see: V.P. Srivastava, 2002, pp. 59-83.
\end{flushleft}
instability is a constant feature of the State.

The status of human rights in Pakistan can be understood to some extent by the details of the ACHR Report which says that Pakistan’s systematic discrimination against half of its population - women – continued. Honour killings and rape of women at the order of *jirga* (traditional court) are still prevalent in this country. In Sri Lanka, the clash between the two ethnicities, the Tamils and the Sinhalese, has kept a war like situation in the country which is still recovering from the damage after wiping out the terrorist outfit. The country faces serious refugee problems also.\(^{29}\)

### 1.4.1 Efforts to Address the Human Rights Concerns of South Asia

On the basis of the above mentioned information, one can easily argue that South Asia happens to be badly struck by violations of human rights. However, that is only one side of the picture. The other side of the situation in South Asia is that all these countries are individually trying to handle the overall human rights conditions in their territory and they have also set up commissions and other organisations to take care of promotion and protection of human rights. It is because of the human rights concerns of the region that in December 1990 the Third World Congress on Human Rights was held at Delhi.

It may perhaps be wrong to say that there has been no effort to set up a regional human rights system within Asia before this Congress of 1990. Not only that these States are individually trying to handle but also the international organisations like the UN and the regional organisation, that is SAARC, is working towards this end.

Since 1982, the UN has organised sixteen workshops to explore the possibilities of setting-up a regional human rights system in the Asia Pacific region. In case of the SAARC, the organisation has been working to address all the human rights problems of the region’s societies through various documents and plans.

An elaborate discussion on the efforts of the United Nations and its regional agencies has been made in a subsequent chapter of this study. At this point, I want to make only one argument that it is wrong to label South Asia as a region

\(^{29}\) *ibid*, pp. 1437-1785.
devoid of human rights values and consciousness, as has generally been argued.

1.5 Motivation for the Present Study

The purpose of this study was thus to bring the region of South Asia in the academic limelight especially for its potential for establishing a regional human rights charter. The motivation for this study came from all the documents of the SAARC wherein the concept and concern for human rights could be seen as a golden thread. It intrigued me enough that even then the region and its organisation are belittled by the label of no human rights concerns by various scholars, which played another motivation factor for this study. On the other hand, when I was trying to understand the network of human rights monitoring all over the world may it be at international level or at regional level, I realised two things, the first which was very obvious that there is no such system being proposed for Asia. And the second was that in the existing levels of human rights monitoring, I found that there is a gap of one level, since there was no sub-regional level mechanism in this structure of human rights monitoring. This point was another driving force in the direction of this study.

Along with all the above mentioned factors which I came across during my study as I also found that regionalism in almost all the regions has had tough times like that of South Asia, and these problems are not big enough to hamper the growth and establishment of regional consciousness for human rights. This understanding helped in two ways, first that South Asian problems are not insurmountable since other regions have passed through almost same phases. Secondly and most importantly, human rights system is not a distant dream for this region.

It is important to mention here that I observed that all the regional mechanisms were uniquely connected and disconnected at the same time. They were connected due to their allegiance to the universal human rights norms and they were disconnected because they were articulating those universal norms in their own regional approach. Therefore, I was freed from the burden of ‘falling in line’ while proposing the new mechanism. As a researcher I think this is perhaps the best motivation that he or she can think and write beyond any paradigm, but within reasons, of course.

I am sure that the motivation behind this study is not limited to this doctoral
thesis and I am going to continue working for South Asia and for its human rights spirit. All this motivation could not have come to me had I not read enough on the topic. Hence, I am discussing some of the most inspiring works related to this study in the paragraphs that follow.

1.6 Review of the Existing Literature

The study was based on human rights monitoring at international and regional level, development of regionalism, regional organizations, South Asia, SAARC and the right combination of all these varied sub themes. Hence it is very difficult to demarcate between the more important and the less important works which helped in finding the right direction. While preparing for this research thesis, the following books and articles were reviewed, in addition to the works mentioned in the main body.

Brooke A. Ackerely’s book entitled *Universal Human Rights in a World of Difference*, published by Cambridge University Press, Cambridge, 2008, deals with the universality of human rights and the dichotomies attached to them. I understood the criticisms offered to the human rights concept on the different bases and I also came to know about the generations of human rights. The book also presents the difference in the theory and practice of human rights (pp. 195-307) which helped me in building my arguments at different points of my study.


2000 is a very relevant book for any research in the field of human rights. The book discusses the human rights monitoring system of the UN (pp. 15-200) national (pp. 201-332) and regional responses (333-382). The book also deals with the challenges before the treaty bodies of the United Nations working of the protection of human rights (pp. 383-500). The weaknesses of the UN system was important for me to understand since I could use these points in the form of arguments in favour of regional systems as a complement to the UN system, as they did away the loopholes of UN’s monitoring system.

An edited work by Malcolm Evans and Rachel Murray entitled, The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000, published by Cambridge University Press, Cambridge, 2002 proved very helpful in making me understand the regional human rights mechanism of the Africa. The book highlights the nature of the rights guaranteed in the African Human Rights System, the implementation of those rights, and the role of Non-governmental Organisations (pp. 246-279) and the African Court (pp. 305-334). This book was very helpful to understand the uniqueness of the African system and also facilitated further comparison with the other regional systems which I have included in the sixth chapter of the study.

As I was penning down the points of comparison between the human rights organs of various regional mechanisms, I came across this book by Rachel Murray, entitled The African Commission on Human and Peoples' Rights and International Law, Hart Publishing, Oxford, 2000. This book deals specifically with the African Commission on Human and Peoples' Rights and analyses the organ in theory and in practice. The book also presents a highly educative comparison with the other similar international bodies which was very helpful for the comparative section of the thesis.

As mentioned earlier also, this doctoral study is an interface between politics and law of human rights. I was trying to read and understand that as to how to relate human rights monitoring with the political issues and during that phase of my reading, I found a book by Margot E. Salomon, entitled, Global Responsibility for Human Rights: World Poverty and the Development of International Law, published by Oxford University Press, Oxford, 2007. The book presents a spectacular range of issues involving the subject of human rights. The book
begins by a very relevant question of reconciling sovereignty of states with international obligation like human rights (pp. 15-59) and the role of treaty bodies regarding this. It also deals with a very important issue of sources of Cooperation for Human Rights in International Law’ (pp. 64-111) as human rights are a brand of International Law only. The book also discusses the third generation human rights, that is, the Right to Development (pp. 112-160) which I have related to the African system and have also used while building arguments for the South Asian proposal.

During the time when I was trying to get hold of the pulse of my doctoral topic, I read an edited work by Janusz Symonides entitled, New Dimensions and Challenges for Human Rights, published by Rawat Publication, Jaipur, 1998, which proved to be a very important work in the field of human rights. The book discusses the UN’s role in the promotion and protection of human rights and the challenges involved therein (pp. 1-46) which guided me in my second chapter. The book also highlights the civil and political and the economic, social and cultural rights (pp. 71-98) and moved on to discuss the ideas of cultural relativism related to human rights which was an interesting aspect of understanding the cultural reasons behind the idea of having a regional mechanism for human rights. However, I have not used this aspect categorically in my study, although it helped me in understanding my ideas better.


Regal Publications, New Delhi, 2008, the historical development of the concept of human rights has been discussed (pp. 3-29). For UN’s human rights regime and its first document on human rights, I read book entitled: *The Universal Declaration of Human Rights: A Common Standard of Achievement* edited by Gudmundur Alfredson and Asbjorn Eide and published by the Martinus Nijhoff, The Hague, 1999. This is a very relevant work giving thread bare details of the Universal Declaration and analysis of each Article of the Declaration. It opened my mind to certain innate controversies of the universal concept of human rights which I could use to build my arguments for this study.

In the book entitled *Human Rights: Universality in Practice* by Peter R. Baer, a publication of the Macmillan Press, London, 1999, the dichotomy between the Universalism and Cultural Relativism with reference to human rights has been discussed (pp. 9-19). The book also gives an insight into the economic, social and cultural rights (pp. 333-41) and collective rights (pp. 42-56). This understanding of various kinds of human rights proved very important for me throughout the research. In addition to these aspects, the book also discusses the regional supervisory mechanisms for human rights (pp. 72-83) and the role of NGOs (pp. 114-129) in the promotion and protection of these rights. The reading on role of the NGOs in human rights promotion helped me in the last two chapters of the research when I was framing blue print for the proposed mechanism for human rights.

The book entitled, *International Human Rights in Context: Law, Politics, Morals* by Henry J. Steiner, Philip Alston and Ryan Goodman, published by the Oxford University Press, Oxford, 2008 was full of important information on human rights and their monitoring. The book analyses the history and development of human rights concept and movement (pp. 3-149). The book also deals with the ‘dilemmas of Universalism’ (pp. 475-668) with reference to international human rights. The regional arrangements (pp. 925-1086) of human rights are also discussed in detail. This book helped me in developing understanding of the regime of human rights system in the world.

For further understanding of the European system of human rights, I also read edited work by Nanette A. Neuwahl and Allan Rosas, entitled, *The European Union and Human Rights* and published by the Martinis Nijhoff Publishers, The

The book entitled, *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights* by A.H. Robertson and J.G. Merrills published by the Universal Law Publishing, Delhi, 1996, is an important work as it explains international as well as regional human rights regimes. The book deals with the UN’s monitoring system of human rights (pp. 25 - 119) and discusses all the existing regional mechanisms (pp. 120-237) along with their respective arrangements (pp. 238-274). Most importantly the book presents the evolution of the Arab human rights mechanism also.

The second aspect of my study is political in nature as it deals with regionalism and more specifically with South Asia. In order to establish the link between the human rights I looked for books which were devoted to human rights, however, they included Asian interpretations, too. Fortunately I found such works some of which I have reviewed as under.

The book entitled: *Human Rights in Asia: A Comparative Legal Study of Twelve Asian Jurisdictions* edited by Randall Peerenboom, Carole J. Peterson and Albert H.Y. Chen and published by Routledge, New York, 2006 has analysed the protection of human rights in South and South East Asian countries like Japan, (pp. 121-157) Singapore, (pp. 158-190), Malaysia, (191-223), India (pp. 384-412) etc. and provided a basis for comparative approach for this research. I could use this reading for the human rights system of ASEAN and other organizations of Asia.

In book entitled: *Human Rights: New Perspectives* edited by Adamantia Pollis and Peter Schwab New Realities, Viva Books, New Delhi, 2002, human rights developments in East Asia have been discussed (pp. 139-162) which is one chapter of my study, where I have discussed human rights endeavours within Asia.

While I was trying to understand the human rights efforts within Asia, I came across another book published by the Commonwealth Secretariat entitled,
Comparative Study on Mandates of National Human Rights Institution in the Commonwealth, London, 2007. This book discusses promotion and protection of human rights through National Human Rights Institution and also provides information to understand these institutions. The in-depth information of the book about the NHRI introduced me to a new aspect of study which I did not know before and which I used as the golden thread in this study.

In the book entitled, On Human Rights, by James Griffin published by Oxford University Press, Oxford, 2008 gives analyses of the discrepancies between philosophy of human rights and international law (pp. 91-211) and also discusses group rights (pp. 256-276) which I found relevant with regards to Asia. In another book entitled, Human Rights: Social Justice and Political Challenge by Bani Borgohain, published by Kanishka Publishers, New Delhi, 2007 ‘Country Studies in Asia’ have been provided (pp. 222-262) which helped me in my understanding of the region and its human rights aspect.


In all these writings where I read about the Southeast Asia human rights system, I could not find an elaborative discussion on the sub-regional human rights mechanism in South Asia. Hence, it was an indication that my study stands its relevance to fill this research gap in the field of human rights mechanisms.
The next part of my review of literature is based on the books and writings which I used for understanding South Asia. It was indeed a tricky job since I had to keep in mind the political aspect of the region as well as I had to keep looking for arguments which could have been supporting my proposal. Fortunately I found several works of this nature. The review of these works is given in the following paragraphs.


Research papers like Kanesalingam, “General Overview of SAARC's Achievements”, *Marga*, Vol. 12, No. 1, pp. 1-16 helped me in understanding the evolution of the SAARC. The paper provides an elaborate history of the organization and the dilemmas involved in the process. While I had to understand the history of the organization, it was equally important for me to know the contemporary or recent developments of the region. For such an information, I read research papers like Nihar Nayak, “India-Nepal Peace and Friendship Treaty (1950): Does it Require Revision?” published in *Strategic Analysis*, Vol. XXXIV, No. 4, July 2010, pp. 579-593. The paper focused only on the history of the treaty between the two nations and discussed the future ahead. However, after reading this work, I was able to relate it to the possibility of a common stand on certain human rights issues since this paper mentioned that in the treaty, mutual respect for the migrants of the parties was included which is related to the regions human rights concerns. Through such writings, I could also infer some points of similarity with similar initiatives which were taken by member States of some other region.

discussed about the after effects of the extremist rule in Afghanistan which happens to be the newest member of the SAARC. By reading this paper I could relate the status of media in the country to the condition of freedom of expression and to criticize the regime as a political human right. To maintain the contemporary relevance of my study, I kept reading news items such as Shubhajit Roy, “Terror has Silenced Powerful Voice of Peace: S.M. Krishna”, The Indian Express, 21 September 2011, p. 12, in which the assassination of the former President of Afghanistan, Burhannudian Rabbani. News items like this made me understand the concern of India for the neighbouring countries like Afghanistan and also brought into light terrorism as a concern for human rights.


The book entitled, Are Human Rights Western?: A Contribution to the Dialogue of Civilizations written by Arvind Sharma, published by the Oxford University Press, New Delhi, 2006 is very relevant for the purpose of understanding South Asian perspective on human rights. The book discusses, ‘The Colonial Perspective’, which is very relevant for this research as this book is focused on South Asia where most of the countries of this region have colonial background.

The book entitled, Human Rights in India: Problems and Perspectives, edited by B.P. Singh Sehgal and published by the Deep and Deep Publications, New Delhi, 2004, presents a wide range of discussion on the different aspects, human rights. In the article by Bharat Anand entitled as "Human Rights Problems: An Afro-Asian and Latin American (AALA) Perspective" (pp. 611-620) the human rights approach of African and Asian countries has been discussed. This discussion was highly relevant to all the countries of South Asia.
V.P. Srivastav’s book entitled *Human Rights: Issues and Implementation*, Vol. I and II, published by the Indian Publishers, Delhi, 2002, in its first volume presents historical perspective of human rights (pp. 3-158) and discusses group rights (pp. 311-660). In the second Volume, the book gives an overview of ‘Human Rights Situation in South Asia including China (pp. 1233-1598).

In a book entitled *Human Rights in South Asia* written by Pramod Mishra and published by the Kalpaz Publications, Delhi, 2000, human rights issues in South Asian countries like India (pp. 1-59), Nepal (142-151), Bangladesh (pp. 172-212) etc. have been discussed with reference to particular issues involved, for example, Refugee Situation (pp. 60-118) Asylum (pp. 152-171) etc. Similarly, book by Satish Kanitkar, entitled, *Refugee Problems in South Asia* published by the Rayat Publications, Delhi, 2000 focuses on Refugees in the South Asia and related concerns.

I came across a very important and relevant book on regional development of South Asia as well SAARC while I was reading on South Asia. The book was entitled, *Regionalism in South Asia: Negotiating Cooperation, Institutional Structures*, written by Kishore C. Dash, published by the Routledge, Abingdon, 2008, begins with explaining various theories of regional integration. The book discusses the ‘the Dynamics of Third World Regionalism” and how is It different from the Eurocentric approach towards regionalism (p. 12). The book proceeds to explain the reasons behind weak regionalism amongst the developing countries. Since all the South Asian countries fall in this category, this part of the book is also very helpful for this study. All the three basic features which are responsible for this weak nature of regionalism according to the author (restricted horizons of the illiterate publics, lack of organizational and political skills to handle the regional unification, in the citizens and pre-occupation with the internal matters, (pp. 20-44) are true to the South Asian region. I read a research paper entitled, “Cooperation with Regionalism: The Future of South Asian Regionalism”, written by Lok Raj Bala, published in *South Asian Survey*, 2006, Vol. 13 (pp. 265-275). The paper highlights the stagnant cooperation in South Asia and proposes a common road map to enhance it. The paper also emphasizes the need to democratize the whole region.

In the paper entitled, “A New Model of Asian Regionalism: Does the Shanghai
Have More Potential than ASEAN?” written by Stephen Aris, published in Cambridge Review of International Affairs, Vol. 22, No. 3, September, 2009, pp. 451-467, an insight of the regional awareness within Asia has been provided. The paper also presents an interesting comparison between the organisations representing the Central and the South East Asia, an aspect on which study has relied on through out to draw lessons and seek direction. Connected to this idea a working paper entitled, “Theorising Regionalism”, written by Luk Van Langenhove and published by United Nations University, Belgium, 2003, highlights the importance of regions despite a variety of differences in which these are defined and manifested.

Mary Farrell, Bjorn Hettne and Lu Van Langenhove in their edited work entitled, Global Politics of Regionalism: Theory and Practice, published by the Pluto Press, London, 2005, emphasise the international trend towards more and more regional integration (p.1). The book gives a background of the evolution of modern regionalism in the African region. The book also argues that regionalism is a response to globalization which is also one of the arguments supported by this study.

In addition to these secondary sources, I used primary documents extensively. I read and analysed the constitutions of the regional organizations namely, the Council of Europe, the Organisation of American States, the African Union, the League of Arab States, the Association of South East Asian States and the SAARC which were used in the study. Also, I read the Declarations and Charters like the Social Charters of South Asia and Europe. I read these primary sources from print publications as well as from the reliable internet sites.

The above mentioned books and papers did mention the regional development of South Asia and its regional organisation; SAARC; however, there was not much information on human rights initiatives within this region and under the SAARC. All I could find was a reference to human rights related efforts of the region and its organization which I have tried to analyse to the most of my capacity in this study.

No research worth the name can be done without the help of research methodology. I read a number of books on research methods wherein I could
understand what techniques might be helpful for my doctoral thesis. Books like *Research Methodology: Tools and Techniques*, written by B.L. Kothari, ABD Publishers, Jaipur, 2007 explained ‘Interdisciplinary Approach’ in research (pp. 225-261) wherein the need for such a research, its types and processes, the problems involved is discussed. The advantages and disadvantages of such a research are also discussed. This is very relevant to the present research as the latter is also interdisciplinary. The book also explains ‘the Interview Studies in Research’ where the interview techniques and their relevance is discussed (pp. 308-356) and the merits and demerits of ‘Method Questionnaire’ are discussed. I used these methods in my study.

The book entitled, *Research Methodology*, written by K. Chakraworthy, published by the Sumit Enterprises, New Delhi, 2000 deals with the relevance of the ‘Review of Literature’ (pp. 74-106) which helped me in planning my reading and collection of research material also. John Adanes *et. al.*, in their book entitled, *Research Methods for Graduate Business and Social Science Students*, published by the Sage Publications, 2007 discuss highly important points related to research, for example, ‘Research Ethics’ (pp. 35), the Primary and Secondary Data Collection Techniques (pp. 107-116 and 117-127 respectively) etc.

Wayne C. Booth, Gregory G. Colomb and Joseph M. Williamsin their book entitled, *The Craft of Research, III Edition*, published by the University of Chicago Press, Chicago, 2008 guide the researcher that how the researcher should keep evaluating his work as a reader from time to time. This actually happened with me throughout my research. I could see that my understanding and ability to interpret and analyse improved from the time of collection of material to writing down my thesis. It further improved every time I started to review my chapters and while correcting the chapters.

In the book entitled: *Research Methodology* written by C. Rajendra Kumar and published by the APH Publishing, New Delhi, 2010, the author explains the difference between the experimental and non-experimental research where he touches a point the Hypothesis may not be included in the latter kind of research since it is exploring something new. This argument is very close to my research since in my study also I have attempted to explore a new mechanism for human rights at sub-regional level. In another work by Aditham Bhujanga Rao entitled as
Research Methodology, published by the Excel books, New Delhi, 2009, the author discusses various kinds of research including exploratory and inter-disciplinary. Both these kinds are related to my research. For other aspects of research techniques, I read books like P. K. Majumdar’s Research Methods in Social Sciences, published by the Viva Books, New Delhi, 2009. The book has explained observation as an important method of research. The author also specifies that in social sciences observation is not restricted to what is seen with eyes; rather interpreting what we see around is also termed as observation. I used this method extensively throughout my research work.

On the basis of my understanding developed from the reading and reviewing of the existing literature, I was able to understand my doctoral topic better.

1.7 Hypothesis

The nature of my research has primarily been descriptive. The study has essentially been based on the analysis of the international and regional human rights monitoring and has further compared all the kinds of monitoring systems so as to bring out interdependence and exclusivity of these mechanisms. On the basis of these findings, I have moved on to propose a new mechanism for South Asia. Before proposing a new system for human rights monitoring in the region, I have also attempted to analyse and interpret the South Asian factors which can be used to support such a proposal.

The study was inspired by the following hypotheses:

- Regional level of human rights mechanisms came up almost simultaneously to the human rights system of the UN. However, the regional human rights mechanisms are better enforced as these are the treaty based mechanisms..

- The regional systems for human rights at regional level are adapted as per the needs of the region. There have been efforts to establish a regional human rights mechanism for sub regions of Asia which is unique as per the demands of the region.

- The South Asian countries have certain common human rights problems which have been observed by the regional organisation SAARC from time to time. SAARC, the regional organisation has the potential to take up
human rights issues of the region. Although this potential remains under estimated and understudied largely.

- Taking lessons from the existing regional human rights regimes, one can propose a regional human rights mechanism for South Asia with its own unique features.

I am of firm opinion that our region of South Asia needs to be studied from a different aspect so that its capacity can be explored. The study wants to bring out a new idea for the academic attention with a hope that this idea will fructify one day.

1.8 Objectives of the Study

This study was dedicated to certain underestimated aspects of South Asia and the purpose of the study has been to bring these aspects of South Asia in the academic limelight.

Another objective of this research was to reach for unexplored potential within the SAARC and its member countries to work towards their own human rights mechanism which will contribute a lot to the region's repute and goodwill. It is also submitted that such a regional platform will also help in decreasing the tensions between the South Asian countries as discussed in the concluding chapter.

1.9 Data Base and Research Methodology

This research has been an inter-disciplinary one since I was studying political as well as the legal aspects of universal human rights system with special reference to the sub-region of South Asia. The research at hand had another feature that is it was an exploratory research wherein I was describing facts, adding interpretations, attempting comparisons and finally proposing a new paradigm. Because of these two features of this research the research methodology adopted for this study is has primarily been doctrinal or descriptive.

As mentioned by the author S.N. Jain in his article “Doctrinal and Non-doctrinal Legal Research”, this kind of research is most suitable to any research with comparative aspect involved.\(^\text{30}\)

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In addition to doctrinal research, I have used comparative method to develop analogy between different variables. I have first explained the international human rights monitoring and have then compared it to the regional systems. After that, I studied the regional level mechanisms of human rights and have then compared their features. I further compared the political and social features of these regions to the features of South-East Asian region. On the basis of the similarities found in this comparison, I applied the conclusions on the South Asian region. Hence I have used induction deduction method of research while using comparative method of research.

As this doctoral research was exploratory in nature, therefore, I had, therefore, used interview and questionnaire techniques to record the views of the scholars and experts of this field of study. In 2008, there was a conference being held at Bangkok, Thailand. In this conference there was a session on the SAARC wherein a lot many scholars of the field were taking part. Since I could not participate in this conference, the organisers were kind enough to allow me to get my questionnaire circulated in this session of the conference. The ideas expressed by the participants gave me the required direction and motivation for this study.

Using my own understanding, I compared the texts of the organizations including the human rights related documents and drew new analogies and similarities. For example, I made a comparative study of the two Social Charters of the Europe and of South Asia, I have compared the constitutions of different regional organizations included in the study, and I have inferred several points of achievements or appreciation for the variables in the study on my own and with the help of literature available.

Throughout this journey of discovering new and most suitable method of research my guide and supervisor as well as my co-supervisor have been of great help to me. They are solely responsible for opening up the window of research and exploration of my mind.

1.10 Inter-Disciplinary Relevance of the Study

The idea that any discipline can be better studied in its totality when studied in relation to other related disciplines is not new. A German scholar named Breno Knall classified research as multidisciplinary, quasi-Inter disciplinary or Inter-
disciplinary. According to him, a multi-disciplinary research means to study a problem common to more than one disciplines and proposing a solution keeping in mind the views of all the concerned disciplines. In 1973, the Indian Council for Social Sciences Research, New Delhi, published a report in which it emphasized that there is need for inter-disciplinary research in order to get more fruitful and practically useful research outcomes. Part of the report read as follows:

Much of the current research effort has no relevance to contemporary social and national problems and suffers besides from lack of rigour in its analysis of phenomena and synthesis. Multi-disciplinary research and inter-disciplinary research is yet rare. A more encouraging feature, however, is that the community of Indian Social Scientists is alive to these defects.

In the light of above the mentioned ideas of one of the leading research agency of India, this study has been made inter-disciplinary in nature so that the political background of the different regional human rights mechanisms could be addressed. In legal field, human rights are studied as Human Rights Law, in political science human rights are studied as political tool to address socio-cultural problems. The fact that human rights are still evolving is because these rights are affected by political and social background of a States or an organization, therefore, the human rights law is also evolving with it. If we try to look at it from another angle, most of the criticisms offered to the improper implantation of human rights law have its roots in the political environment in which this human rights law is functioning.

Particularly in this study, I have tried to club the political, social and cultural features of a region as its regional features and there after I have attempted to connect these regional features to the regional organisation’s human rights initiatives which were legal in nature. After drawing some generalizations from these regional mechanisms I tried to explore these features in a Sub-Asian region

32 id.
other than South Asia. Having found most of the features similar I moved on to propose a similar mechanism for South Asia. While doing this the special emphasis was laid to the regions political and social background.

To conduct this research I have used primary sources like the UN Declarations, regional human rights conventions, SAARC declarations and treaties etc. For this study, secondary sources like books, journals and articles etc. etc. have also been used extensively. A lot of my study has derived its arguments from comparative study of the primary as well s the secondary research materials.

I have also used observation method, administered questionnaires and conducted informal interviews with some of the prominents academician to draw inferences for my study.

1.11 Research Questions

An attempt has been made to seek answers to the following research questions:

(I) What are the politico-legal perspectives of evolution of universal human rights hidden within the philosophical and historical evolution?

(II) What is the structure and nature of the parallel human rights mechanism running under the United Nations and how is it linked with the emergence of regional systems?

(III) Which are the existing regional human rights mechanisms and what are their politico-legal backgrounds?

(IV) What are the efforts within Asian region to bring up a regional human rights mechanism?

(V) What are the human rights concerns of South Asia and what are the efforts made by the South Asian Association for Regional Cooperation (SAARC)?

(VI) What can be learnt from the other regional mechanisms for human rights and how should a road map for South Asian human rights mechanism be planned?

1.12 The Chapterisation Plan

The scope of study is quite spectacular as it has attempted to deal with the universal concept of human rights and has compared it with the regional issues of
human rights in South Asia. The study has also analysed the potential of SAARC to contribute in the promotion of human rights in this region. The chapterisation plan for this study has been discussed in the following paragraphs.

In this study, I have introduced the research topic and research methodology in the first chapter entitled, 'Introduction'. In the second chapter entitled, 'Genesis of the Concept of Universal Human Rights: From Universalisation to Regionalisation', I have discussed the philosophy and the concept of human rights and the origin of the contemporary version of human rights as we understand today. In order to do so, I have discussed the philosophic approaches to human rights as mentioned in the different religious texts; then I have discussed how these philosophic approaches were taken up by the different political philosophers in different parts of the world. Along with this, I have also discussed the efforts made by some of the rulers at various stages of history, to codify these rights. In modern times the international concerns over these rights emerged even more strongly and were addressed by the international organisations like the League of Nations and the United Nations, which I have discussed at length.

In the third chapter entitled, 'The Existing Regional Mechanisms of Human Rights: An Overview', I have described the emergence of the regional human rights systems to protect human rights in the regions of Europe, America, Africa and Arab. While doing so, I have used the theoretical features of the regionalism of these regions, which were partially responsible for the coming up of such mechanisms for human rights. I have used this method as an induction method for this study. I have also comparatively analysed these regional initiatives.

In the fourth chapter of the present study, entitled, 'Human Rights Initiatives Within Asia' I have brought forward similar efforts having been made in Asia for promotion and protection of human rights. Here, I have also analysed some of the regional features working at the background of these efforts by using deduction method. At this step, I have discussed the South-East Asian initiatives to protect human rights. While doing so, I have tried to bring out the unique features of this mechanism as well as its similarities with the other regional mechanisms.

In the fifth chapter entitled, 'Human Rights in South Asia and SAARC', I have tried to focus on the plinth of this study, that is, South Asia. I have discussed the
background of this sub-Asian region in this chapter. I have also made an attempt to highlight what are the region’s problems related to human rights and how these issues have been addressed by the regional organisation, that is, the South Asian Association of Regional Cooperation (SAARC).

In the sixth chapter entitled, 'Human Rights Mechanism for South Asia: Lessons From the Existing Regional Mechanisms', I have also tried to include inferences from the previous chapters of the study, for example, I have used regional features of the Europe, America, Africa, Arab and other sub-Asian regions while discussing the features of South Asia as a region. Along with this, I have also comparatively analysed the organisation representing the region of South Asia, that is, the South Asian Association of Regional Cooperation (SAARC) for its efforts for human rights promotion so far. I have also tried to suggest a few lessons that the SAARC may take from the other existing regional mechanisms.

In the seventh and the concluding chapter entitled, 'Road Map for South Asian Human Rights Mechanism: A Proposal', the study proposes a regional mechanism for the South Asia under the aegis of the SAARC. In this part, I have incorporated views of some of the eminent scholars working in the field of South Asia and human rights. And have tried to project how the regional tensions may be reduced with the help of such a platform.

This doctoral study has been conducted with a futuristic approach and has tried to incorporate various factors and perspectives to build the case for a South Asian human rights mechanism. I as a researcher completely identify with the idea behind this piece of research and would like to carry on with further work on this aspect even after the degree is over. I am fortunate enough that so far the idea behind this doctoral research has been greatly appreciated by the scholars from within India and as well as from abroad and I am sure with further study and analysis this idea can be brought to some practical aspect.

With such motivation I would begin with my second chapter which will discuss the genesis of the concept of human rights. While discussing the evolution of the universal approach towards human rights I would try to trace the political as well as legal consolidation of these human rights related approaches.