

A SUB-REGIONAL HUMAN RIGHTS SYSTEM FOR SOUTH ASIA: POSSIBILITY OR A PIPE DREAM?

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ABSTRACT

Human rights protection mechanisms operate at various levels, including domestic, international, and regional, with distinct roles and functions. While international and domestic mechanisms are fundamental to human rights protection and promotion, regional human rights mechanisms are also considered as unique in addressing human rights issues, as they reflect region-specific human rights concerns, setting higher standards, and enhance the monitoring of State compliance with human rights obligations. The Advisory committee to the Human Right Council identifies five regions or areas where regional human rights mechanisms have been or are to be established, namely the Europe, the Americas, the Africa, the Arab States and Asia. Among them four regions already possess regional and sub-regional systems while Asia only has a sub-regional mechanism for Southeast Asia. The existing three key regional human rights systems are the European, Inter-American, and African systems, each with its distinct features, strengths, weaknesses, and inherent challenges. The idea of establishing a regional human rights system for the entire Asian region is highlighted in several occasions, yet cultural and political diversity and lack of political will among other reasons are considered as main factors for not having such an intergovernmental human rights mechanism for Asia. In this context, it is argued that the sub-region could benefit with a regional human rights protection mechanism that serves as a bridge between the domestic and international human rights compliance given the highest number of human rights violations in South Asia. Although South Asian region already has some form of a regional mechanism based on South Asian Association for Regional Cooperation (SAARC), it lacks a specific mandate to protect human rights. In this context, this study aims to explore challenges, opportunities, and prospects for establishing a human rights system for South Asia, examining how best practices of other regional systems could be integrated into the South Asian context to better protect human rights in the sub-region.

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1. INTRODUCTION

The protection and promotion of human rights are fundamental in the contemporary world, given the increasing human rights issues and violations. In this context, there are human rights systems established at three main levels, namely, domestic, regional and international. While the domestic and international human rights mechanisms are the most popular, regional human rights mechanisms are also considered as unique in addressing human rights issues, as they reflect region-specific human rights concerns, setting higher standards, and enhance the monitoring of government compliance with human rights obligations. While international human rights mechanisms provide a universally applicable minimum baseline, regional systems have the advantage of setting more advanced standards based on shared cultural and political realities. South Asia, despite its common cultural heritage and shared historical experiences, currently lacks a dedicated regional framework for human rights, unlike other regions with established mechanisms. The current study explores this gap by providing a comprehensive analysis of the need for a tailored human rights system that responds to the specific challenges and dynamics of South Asia.

South Asia is characterised by diverse socio-political contexts, including varying levels of political instability, ethnic conflicts, and social inequalities. Therefore, this paper aims to assess the specific issues and opportunities South Asia has in the establishment of a sub-regional human rights mechanism, identifying strategies that could overcome these challenges. In order to better understand the need for and potential of such a system, this paper compares other regional human rights systems already established across the globe, evaluating their experiences, including both strengths and weaknesses. By drawing on lessons from them, this paper explores a framework that is specifically tailored to South Asia. The main aim of the study is to examine the diverse needs of the region, while enhancing human rights protection and promotion. Ultimately, the paper provides recommendations for the creation of a tailored sub-regional human rights system for South Asia, aiming at a balanced and effective approach that aligns with the complexities and aspirations of the region.

2. THE SIGNIFICANCE OF REGIONAL HUMAN RIGHTS PROTECTION SYSTEMS

Some authors contend that regional human rights regimes are neither a mere extension of a global human rights regime nor a combination of regional constitutional cultures.¹ For them, the rationale behind these regional regimes lies in their ability to articulate and institutionalise human rights in ways that are more responsive to and legitimate within a particular region, taking into account its unique cultural, legal, and political contexts.² However, there are arguments both for and against the idea of establishing regional human rights mechanisms.³ In this backdrop, one of the main arguments against regional human rights mechanisms is that allowing them would undermine the applicability of certain universal human rights within the region, thus challenging universality. However, it is recognised that regional influences are not always inappropriate and can enhance the degree of acceptance of a regional human rights instrument/s among the people of the region, as long as universality is not compromised.⁴ The African Charter on Human and Peoples' Rights is a valuable example in this regard.

An argument for establishing regional human rights mechanisms is its ability to address specific regional concerns more effectively, using relevant and targeted strategies compared to broader international bodies. While international human rights mechanisms aim to establish a baseline of protection acceptable for everyone, regional systems are known for facilitating the adoption of higher human rights standards. Due to the relative cultural similarity within regions, regional human rights mechanisms are considered an appropriate complement to the universal human rights system. Additionally, in a situation where there is no

¹ Başak Çalı, Mikael Rask Madsen, and Frans Viljoen, 'Comparative Regional Human Rights Regimes: Defining a Research Agenda' (2018) 16 *International Journal of Constitutional Law* 128-135 <https://doi.org/10.1093/icon/moy008> accessed 26 September 2024.

² *ibid* 130.

³ Fekadeselassie F. Kidanemariam, 'Enforcement of Human Rights under Regional Mechanisms: A Comparative Analysis' (2006) *LLM Theses and Essays* 80 https://digitalcommons.law.uga.edu/stu_llm/80 accessed 26 September 2024.

⁴ Castan Centre for Human Rights Law (Monash University), Submission on the Asia-Pacific Human Rights Mechanism https://www.monash.edu/_data/assets/pdf_file/0007/139462/Castan-Centre-Asia-Pacific-Human-Rights-Mechanism-Submission-.pdf accessed 26 September 2024.

judicialisation at the global, most specifically at the United Nation's (UN) level, regional mechanisms are arguably stronger, when States agreeing to have human rights cases decided by regional courts with the authority to issue binding decisions.⁵ Furthermore, regional bodies, such as regional human rights Commissions and Courts are often identified as better equipped to monitor and enforce human rights standards due to their closeness and deeper understanding of local contexts. It is also recognised that the regional arrangements reinforce national human rights protection systems and assist national governments in the implementation of their international human rights obligations.⁶

They also better address regional and transnational human rights concerns, providing a source of regional wisdom and experience in the development of new human rights standards. Another argument in support of a regional mechanism is that it may go some way towards addressing human rights problems that States individually are either unable perhaps due to resource constraints or unwilling to deal with.⁷ Furthermore, it is argued that the regional mechanisms promote peace and security by promoting a people-centered sense of regional community that reinforces and does not undermine national sovereignty.⁸ The Bangkok Declaration emphasises that universal human rights must be considered in the context of 'national and regional peculiarities and various historical, cultural, and religious backgrounds'.⁹

⁵ *ibid.*

⁶ Statement on the Case for a SAARC Regional Human Rights Mechanism (United Nations, 2011) <https://www.ohchr.org/en/statements/2011/11/case-saarc-regional-human-rights-mechanism-statement-united-nations-high> accessed 26 September 2024.

⁷ Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade, *Human Rights in the Asia-Pacific: Challenges and Opportunities*, Chap 5 (*Possible Human Rights Approaches for the Asia-Pacific*) (Parliament of Australia, 2010) https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Completed_Inquiries/jfadt/asia_pacific_hr/report/chapter5.pdf accessed 26 September 2024.

⁸ Statement on the Case for a SAARC Regional Human Rights Mechanism (n 6).

⁹ Report of the Regional Meeting for Asia of the World Conference on Human Rights (Bangkok, 29 March - 2 April 1993) UN Doc A/CONF.157/ASRM/8 <https://digital.library.un.org/record/167021?ln=en&v=pdf>.

Overall, Deuja identifies several key opportunities for developing a sub-regional human rights mechanism.¹⁰ According to him, firstly, regional human rights mechanisms provide a less costly and more accessible alternative to existing international processes, making human rights redress more attainable. Secondly, it tackles procedural and institutional weaknesses present in both domestic and international systems strengthening the overall framework. Thirdly, such a system seeks to enhance expertise in human rights jurisprudence within the region, fostering greater understanding and application of these principles. Additionally, the mechanism could improve the implementation and enforcement of human rights norms, by drawing on the intellectual and cultural traditions of a region. Ultimately, it would also effectively address urgent regional challenges, ensuring a comprehensive approach to human rights in the region.¹¹

While the United Nations Charter does not provide for the development of regional human rights systems,¹² it only references such systems in relation to peace and security.¹³ As Smith notes, the initial developments in regional human rights occurred in Europe under the auspices of the Council of Europe and were met with some distrust and skepticism from the United Nation (UN).¹⁴ However, recognizing the need for and importance of regional mechanisms for the full realisation of human rights, the Commission on Human Rights,¹⁵ the United Nations General

¹⁰ S Deuja, 'Establishing a Robust Regional Human Rights Mechanism in South Asia' (2010) 6 SIAN Human Rights Defender https://www.academia.edu/40851242/Establishing_a_Robust_Regional_Human_Rights_Mechanism_in_South_Asia accessed 8 October 2024.

¹¹ *ibid* 6.

¹² United Nations Charter, Chapter VIII: Regional Arrangements, Articles 52-54.

¹³ Rhona KM Smith, *International Human Rights* (8th edn, Oxford University Press 2018).

¹⁴ *ibid* 86.

¹⁵ UN Commission on Human Rights, 'Report on the Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment' (34th session, Geneva 1978) E/1978/34/E/CN.4/1292, 132.

Assembly,¹⁶ and the Vienna Declaration and Programme of Action,¹⁷ have specifically called for their establishment. Significantly, the UN General Assembly issued a series of resolutions aimed at setting up regional mechanisms for promoting and protecting human rights in various regions across the world, including Resolution 32/127 of 1977 stated that ‘appeals to states in areas where regional arrangements in the field of human rights do not yet exist 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’.¹⁸

The World Conference on Human Rights in 1993 also recognised the value of intergovernmental systems to promote and protect human rights at the regional and sub-regional level, and their development has been continuously encouraged by the General Assembly and Human Rights Council. Regional human rights systems typically include human rights instruments, mechanisms for monitoring state compliance, and judicial or quasi-judicial bodies authorised to resolve human rights claims arising from violations of these instruments.

3. EXISTING REGIONAL HUMAN RIGHTS SYSTEMS

The Advisory Committee to the Human Rights Council identifies five regions or areas where regional human rights mechanisms have been or are to be established, namely, the Europe, the Americas, the Africa, the Arab States and Asia.¹⁹ Its report in 2018 emphasises that four regions already possess regional and sub-regional mechanisms while Asia only has a few sub-regional mechanisms.²⁰ The existing three key regional human rights

¹⁶ Resolution 32/127 (United Nations General Assembly, 1977) UN Doc A/RES/32/127 <https://documents.un.org/doc/resolution/gen/nr0/313/62/pdf/nr031362.pdf>.

¹⁷ Vienna Declaration and Programme of Action (World Conference on Human Rights, 25 June 1993) para 13 <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action> accessed 8 October 2024.

¹⁸ UNGA Res 32/127 (16 December 1977) UN Doc A/ RES /32 / 127, 149 <https://documents.un.org/doc/resolution/gen/nr0/313/62/pdf/nr031362.pdf> accessed 20 July 2025.

¹⁹ Report of the Human Rights Council on its Thirty-Ninth Session (United Nations, 2018) UN Doc A/HRC/39/58, part II, para 4 <https://docs.un.org/en/A/HRC/39/58> accessed 20 July 2025.

²⁰ *ibid.*

mechanisms are the European, Inter-American, and African systems, each with its distinct features, strengths, weaknesses, and inherent challenges. Among them, the oldest regional system is the European system, and it was followed by the Inter-American system. The African system is the most recent of the three main regional systems. Additionally, a regional human rights mechanism has recently emerged in the Arab and Islamic world. However, the Arab human rights protection mechanism is criticised as not constituting a regional mechanism in the strict sense since the countries concerned are geographically located in both Africa and Asia.²¹ Another important mechanism to consider is the Organization of Islamic Cooperation (OIC), a trans-regional organisation with members in Africa, Europe, Asia and even South America.²²

Considering the general structure of the existing regional human rights systems, an intergovernmental organization is identified as the foundation for a regional human rights system. All three key existing regional systems have been established within such organizations, namely the Council of Europe (CoE), the Organization of American States (OAS), and the African Union (AU) (previously the Organization of African States - OAS). In Asia, sub-regional organisations like Association of Southeast Asian Nations (ASEAN) and South Asian Association for Regional Cooperation (SAARC) are there for Southeast Asia and South Asia, respectively. While CoE, OAS and AU have human rights protection and promoting as their sole or one objective among the multifaceted mandate, SAARC lacks any such human rights mandate.

Another essential component of a regional system is the existence of key human rights instruments specifically tailored to the needs and context of that particular region. The main instrument adopted in Europe is the European Convention on Human Rights (ECHR) (1950),²³ which is the primary human rights instrument in the region. In addition, the European

²¹ The Role of the European Parliament in the Development of Human Rights Policies (European Parliament, 2010) [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET\(2010\)410206_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET(2010)410206_EN.pdf).

²² Human Rights Council Report (n 19) para 8.

²³ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms* (adopted 4 November 1950, entered into force 3 September 1953) ETS No 5 (ECHR) https://www.echr.coe.int/documents/d/echr/convention_eng.pdf accessed 15 October 2024.

Social Charter²⁴ complements ECHR by guaranteeing rights and freedoms which concern all individuals in their daily existence, including housing, employment, health and education. The key instruments in the inter-American region are the American Declaration of the Rights and Duties of Man (1948)²⁵ and the American Convention on Human Rights (ACHR) (1969).²⁶ The African regional system is mainly based on the African Charter on Human and Peoples' Rights (1981) and related protocols, which reflects a high degree of regional specificities.

In terms of human rights protection mechanisms across the three main regions, the European system initially made provisions for a Commission with quasi-judicial functions and a non-permanent Court. However, this structure was replaced in 1998 with the European Court of Human Rights, which currently supervises state compliance with ECHR through inter-state and individual complaints. The European Court is considered as the pillar of the European system. The two protection bodies in the Inter-American region are the Inter-American Commission on Human Rights, and the Inter-American Court of Human Rights. The African system also has a regional human rights commission and a court, namely the African Commission on human and peoples' rights and the African court of human and peoples' rights.

3.1 The European Human Rights System

The European human rights system was developed by the impact of shared cultural traditions, democratic regimes, and economic systems. After WWII, there was a dire need for greater unity motivated by the aspiration to prevent further conflicts, safeguard against communism in the region, and dissatisfaction with the draft of Universal Declaration of Human Rights (UDHR).²⁷ In 1949, the Council of Europe (CoE) was created as a

²⁴ European Social Charter (1961) (revised 1996) <https://www.coe.int/en/web/European-social-charter> accessed on 15 October 2024.

²⁵ American Declaration of the Rights and Duties of Man (1948) <https://www.oas.org/en/iachr/mandate/Basics/american-declaration-rights-duties-of-man.pdf> accessed on 15 October 2024.

²⁶ American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.pdf accessed on 15 October 2024.

²⁷ Shveta Dhaliwal, *Human Rights Mechanism in South Asia* (Routledge 2017).

key human rights body and it led the foundation to introduce the European Convention on Human Rights (ECHR) in 1950, establishing the first treaty-based human rights mechanism in Europe. Over time, the European Commission of Human Rights and the European Court of Human Rights were established to enforce State obligations. The Commission was later abolished in 1998 with Protocol No. 11, strengthening the role of the Court and creating the European Commissioner for Human Rights.²⁸ The CoE, along with organisations like the Organisation for Security and Co-operation in Europe (OSCE) and European Union (EU), continues to play a central role in human rights monitoring in Europe.

3.2 The Inter-American Human Rights System

Regional cooperation for human rights in the Americas date back to the 17th century, with the region playing a role as an early advocate for human rights.²⁹ In 1948, the Organization of American States (OAS) was founded as an intergovernmental organization, establishing the Inter-American human rights system.³⁰ The OAS Charter was amended in 1959 and created the Inter-American Commission on Human Rights (IACHR) to promote and protect human rights across the Americas. As the key human rights instruments, the American Declaration on Human Rights in 1948 and the American Convention on Human Rights (ACHR) in 1969 are important regionally. The ACHR created the Inter-American Court of Human Rights, which is the judicial arm of the region to protect human rights. On the other hand, IACHR as a quasi-judicial body monitors human rights violations, offering recommendations, and also works with the Inter-American Court to address violations. The ACHR is identified as a cornerstone of the system, especially with its developments in incorporating economic, social, and cultural rights. The gradual development of the system, however, reflects the complex balance between sovereignty and human rights in the region amidst various challenges.

²⁸ Council of Europe, European Court of Human Rights (2023) <https://www.coe.int/en/web/tirana/european-court-of-human-rights> accessed 24 October 2024.

²⁹ Dhaliwal (n 28).

³⁰ Christopher Roberts, *‘Alternative Approaches to Human Rights: The Disparate Historical Paths of the European, Inter-American and African Regional Human Rights Systems’* (Cambridge University Press 2023) 51.

3.3 The African Human Rights System

The African human rights system, considered the youngest among regional systems, shares many similarities with South Asia due to their colonial histories and focus on both individual and collective rights. The Organization of African Unity (OAU) was founded in 1963 and focused initially on conflict resolution and sovereignty.³¹ Human rights were not a primary concern until 1981, when the African Charter on Human and Peoples' Rights (Banjul Charter) was signed.³² The African Union (AU), founded in 2002, succeeded the OAU and continues to oversee the human rights framework in the region. The Banjul Charter emphasised the indivisibility of rights and introduced duties for both States and individuals.³³ The Charter led to the creation of the African Commission on Human and Peoples' Rights in 1987. The commission is responsible for promoting and protecting human rights through State reports, conferences, and an individual communications procedure.³⁴ There are several protocols to the Charter, and for example, the Maputo Protocol, which was adopted in 2003, is a significant supplement to the Charter and focuses on women's rights, including sexual and reproductive rights and protections against female genital mutilation and unsafe abortions. The African Court on Human and Peoples' Rights was established in 1998 and operational since 2006. The Court complements the Commission by providing judicial protection for human rights across the continent.

3.4 Other Emerging Human Rights Systems

In addition to the above three key regional human rights systems, a regional human rights mechanism has recently emerged in the Arab and

³¹ African Union, 'Overview' (African Union, 2023) <https://au.int/en/overview> accessed 30 October 2024.

³² Carolyn M Shaw, 'The Evolution of Regional Human Rights Mechanisms: A Focus on Africa' (2007) 6 *Journal of Human Rights* 214 <https://www.tandfonline.com/doi/abs/10.1080/14754830701334665> accessed 25 October 2024.

³³ John M Mbaku, 'The Emerging Jurisprudence of the African Human Rights Court and the Protection of Human Rights in Africa' (2023) 56 *Vanderbilt Journal of Transnational Law* 1.

³⁴ African Commission on Human and Peoples' Rights, 'About' (African Commission on Human and Peoples' Rights, 2023) <https://achpr.au.int/en/about> accessed 30 October 2024.

Islamic world.³⁵ The Arab human rights system was established under the League of Arab States (LAS) in 1945. This system is relatively recent and still evolving.³⁶ Despite early formation of the LAS, the direct address of the human rights came into the picture with the adoption of the Arab Charter on Human Rights in 2004, which entered into force in 2008. Scholars argue that the League of Arab States (LAS) had adopted several human rights standards and mechanisms including provisions on gender equality, rights of the children, non-discrimination, and protections against torture, yet these mechanisms do not always align fully with international human rights standards. The main criticisms target the shortcomings in areas such as, the death penalty for minors, and freedom of religion.³⁷ The Arab system also criticized as lacks a strong enforcement mechanism, relying on bodies like the Arab Human Rights Committee, which has limited authority.³⁸ Given the challenges faced by the system, there are proposals for reform, including the creation of an Arab Court of Human Rights. The Arab human rights system face challenges in balancing universal rights and cultural specificity stemming from deeply embedded social practices and legal variations among member states.

When considering the structure, the achievements, setbacks and challenges faced by the existing regional human rights systems in Europe, Americas and Africa and the Arab, valuable lessons can be incorporated for South Asia in developing a system specifically tailored for the sub-region.

4. HUMAN RIGHTS SYSTEMS IN ASIA

The situation in the Asian region is different to the Europe, the Americas, and Africa, where functional inter-governmental systems exist to address human rights concerns. Despite proposals for an inter-governmental system for the protection and promotion of human rights at the regional

³⁵ Ahmed Almutawa, 'The Arab Court of Human Rights and the Enforcement of the Arab Charter on Human Rights' (2021) 21 Human Rights Law Review 506 <https://doi.org/10.1093/hrlr/ngab008> accessed 1 November 2024.

³⁶ *ibid* 506.

³⁷ Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH and German Institute for Human Rights, *ABC of Human Rights for Development Cooperation: The Arab Human Rights System* (June 2017) 2 https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/E-Info-Tool/e-info-tool_abc_of_hr_for_dev_coop_the_arab_hr-system.pdf accessed 21 July 2025.

³⁸ *ibid*.

level in Asia, achieving this goal remains distinct. Some authors argue that Asia, or Asia-Pacific, is not a coherent region.³⁹ The geographical vastness, diversity, and political complexity of the Asian region present unique challenges. Nevertheless, the idea of establishing a regional human rights system for the entire Asian region is highlighted in several occasions. One specific example of this is the proposal by the Constitutional Court of the Republic of Korea to create an Asian human rights court, which was announced at the third congress of the World Conference on Constitutional Justice in 2014.⁴⁰ However, there are a number of reasons cited in political and academic discussions for the absence of an intergovernmental human rights mechanism for Asia. Among them, cultural and political diversity, together with a lack of political will are considered as main factors for not having such a mechanism in Asia. Some authors have also argued that regional human rights machinery is unnecessary and impossible for the Asia-Pacific region.⁴¹ In this context, establishing sub-regional human rights mechanisms is considered as more plausible and practicable solution, which in the longer term contributes to the creation of a regional human rights protection system.⁴² There has been significant progress recently in this sense at the sub-regional level in Asia, particularly in Southeast Asia through Association of Southeast Asian Nations (ASEAN).⁴³ With the initial civil society-driven dialogues back in 1993, ASEAN committed for new regional human rights mechanism through its Charter and this led to the establishment of the ASEAN Intergovernmental Commission on Human Rights in 2009. The ASEAN developed its own normative and

³⁹ Sidney Jones, 'Regional Institutions for Protecting Human Rights in Asia' (1995) 89 *Proceedings of the Annual Meeting (American Society of International Law)* 475.

⁴⁰ Human Rights Council Report (n 19), para 9.

⁴¹ Jiarong Yan, 'Prospects for Regional Human Rights Machinery in Asia-Pacific' in *International Human Rights Monitoring Mechanisms* (Brill 2021) 731 https://doi.org/10.1163/9789004478886_053 accessed 26 November 2024.

⁴² The Role of the European Parliament in the Development of Human Rights Policies (European Parliament, 2010) [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET\(2010\)410206_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET(2010)410206_EN.pdf) accessed on 26 September 2024.

⁴³ *About ASEAN* (ASEAN) <https://asean.org/about-asean> accessed on 26 September 2024.

procedural approach to human rights at the sub regional level.⁴⁴ Despite criticisms, some scholars contend that ASEAN is the most suitable regional organization for promoting human rights in Southeast Asia due to its membership of all ten Southeast Asian countries.⁴⁵

5. A SUB- REGIONAL HUMAN RIGHTS SYSTEM FOR SOUTH ASIA

Despite developments in Southeast Asia, South Asia continues to fall behind as one of the few geographic areas in the world without its own human rights mechanism. South Asia has more than one-fifth of the world's population.⁴⁶ The region's complex diversity, marked by a wide range of political systems, cultural practices, and socio-economic conditions, has not been adequately addressed by existing international human rights mechanisms. This gap is further exacerbated by political instability, ethnic and religious conflicts, territorial disputes, terrorism, systemic inequalities, and widespread violations of civil, political, economic, social, and minority rights. Additionally, challenges with domestic human rights implementation, sovereignty concerns, and geopolitical issues further complicate the situation. The absence of a formal, organized inter-governmental human rights system tailored to South Asia results in unaddressed human rights violations, leaving victims without recourse and contributing to regional instability.

5.1 An overview of the South Asian Region

The term 'region' refers to 'a group or cluster of states that share a common space on the globe based on common identity, territorial affinities or other identifiable patterns of behavior'.⁴⁷ The scholars argue that, 'regions are both geographical and law-made yet can reconstruct symbolic spaces as

⁴⁴ Maria-Gabriela Manea, 'How and Why Interaction Matters: ASEAN's Regional Identity and Human Rights' (2009) 44 *Cooperation and Conflict* 27–49.

⁴⁵ Shaw (n 33) 212.

⁴⁶ *Regional Overview* (SACEP) <http://www.sacep.org/regional-overview> accessed 26 September 2024.

⁴⁷ Kalevi J Holsti, *The State, War, and the State of War* (Cambridge University Press 1996) 142–43; Don McLain Gill, 'Challenges to Regional Cooperation in South Asia: An Overview' (2020) *Journal of International Affairs* Vol 3, 42–51 <https://doi.org/10.3126/joia.v3i1.29081> accessed 06 October 2024. 44 p.

hardened social structures changing public perception of what constitutes regional identity and where its boundaries lie'.⁴⁸ Writers who focus on geographical proximity identify that South Asia as a clearly identifiable region bounded Himalayas to the North and Indian Ocean to the south, extension from the Persian Gulf to the Straits of Malacca.⁴⁹ Dhital observes that all the states in this sub-region share political boundaries, except for Sri Lanka and Maldives, which are separated from the main landmass by the Bay of Bengal and the Arabian Sea respectively.⁵⁰ In addition, Encyclopedia Britannica, identifies South Asia as a sub-region of Asia, consisting of the Indo-Gangetic Plain and peninsular India.⁵¹

The sub-region comprises of 08 countries namely Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka (also known as SAARC countries). Afghanistan became the 8th member of SAARC in 2007, expanding its membership. As of 2024, the total population of South Asia is estimated at approximately 1.677 billion, according to the latest data of World Bank world development indicators.⁵² The enormous diversity of the sub-region in terms of population, language, religion, race, and culture is one of the greatest challenges for an emerging sub-regional human rights mechanism/arrangement for South Asia. However, the sub region also shares territorial commonalities, as well as common experiences, similar interests and problems including invasion, conquest, immigration and emigration, colonialism, partition, conflict, territorial disputes, and terrorism.⁵³ It is also home to deeply embed structural poverty, social exclusion, conflicts, civil wars and terrorism, internal political crises, hostility of governments towards human rights

⁴⁸ Çalı, Madsen, and Viljoen (n 1) 130.

⁴⁹ Anjana Dhital, 'Regional Development of Human Rights in South Asia' (2021) 9 & 10 Kathmandu School of Law Review (KSLR) 53–54 <https://doi.org/10.46985/kslr.v10iS1.2184> accessed 6 October 2024.

⁵⁰ *ibid* 54.

⁵¹ Yefremov YK, Ryabchikov AM, Sivaramamurti C, and Alexeeva NN, 'South Asia' (2 October 2024) Encyclopedia Britannica <https://www.britannica.com/place/South-Asia> accessed 6 October 2024.

⁵² World Bank, *Population, Total – South Asia* (World Development Indicators, 2024) <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=8S> accessed 6 October 2024.

⁵³ Dhaliwal (n 28).

defenders, and politicized and corrupted institutions and officials.⁵⁴ For example, the territorial dispute between Pakistan and India over Jammu and Kashmir, accompanied by mutual allegations of state-sponsored terrorism and human rights abuses, Pakistan's experience with military rule, lack of democracy and human rights violations, the large-scale and systematic human rights violations in Afghanistan, stemming from conflict and civil war⁵⁵ and recent protests and unrest in response to unnecessary and disproportionate use of force by security forces in Bangladesh⁵⁶ further complicate the situation. All these incidents impede access to social services and justice, undermine human rights and fundamental freedoms within the region.

The idea of a South Asian regional human rights mechanism has often been tied to the South Asian Association for Regional Cooperation (SAARC), given its role in fostering cooperation among South Asian countries. However, there are arguments that the SAARC mentality, which is rooted in inter-governmental cooperation, has demonstrated significant limitations, especially in the context of human rights. SAARC's practice of non-interference in long-standing regional issues, combined with the perception that it is nearing its end as a regional organization,⁵⁷ has shifted the attention towards alternative bodies seeking to fill the vacuum created by its dormancy. For example, regional groupings such as Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation

⁵⁴ Mallika Singh, *Review of Efforts to Establish a South Asian Human Rights Mechanism* <https://ebooks.inflibnet.ac.in/hrdp07/chapter/review-of-efforts-to-establish-a-south-asian-human-rights-mechanism/> accessed 26 September 2024.

⁵⁵ Human Rights and Peace in the Asia-Pacific Region (United Nations University, 2010) <https://collections.unu.edu/eserv/UNU:2441/pdf9280810936.pdf373-376> accessed on 26 September 2024.

⁵⁶ *Preliminary Analysis of Recent Protests and Unrest in Bangladesh* (Office of the United Nations High Commissioner for Human Rights, 2021) <https://www.ohchr.org/en/documents/country-reports/preliminary-analysis-recent-protests-and-unrest-bangladesh#:~:text=Summary,violations%20committed%20by%20security%20forces> accessed on 26 September 2024.

⁵⁷ S I Keethaponcalan, 'End of SAARC, Sri Lanka's Economic Crisis and BRICS' in George I H Cooke (ed), *Revising Regionalism in the 21st Century* (Regional Centre for Strategic Studies 2023) 121.

(BIMSTEC)⁵⁸ and BRICS.⁵⁹ While some place their faith in these alternative groupings, others argue that such organisations differ significantly from SAARC, as they are largely economic or security-oriented, and often dominated by a single actor, factors that limit their appropriateness for a rights-based regional system.

Those who continue to believe in the spirit of SAARC believe that the organization remains capable of addressing contemporary regional human rights challenges in South Asia. Given its significance, SAARC enjoys regional legitimacy and inclusive membership as the only inter-governmental organization in South Asia that includes all eight countries in the sub-region. In this context, the argument is that any new organization would risk political exclusion or duplication, further complicating the regional corporation. As an organization established in 1895, SAARC has a foundational framework, including SAARC Charter,⁶⁰ an arrangement for SAARC summits, the Council of Ministers,⁶¹ Standing Committee⁶² and technical committees.⁶³ In this context, it is argued that SAARC-based regional human rights system could be strategically institutionalized, by expanding its mandate to address human rights issues using advantages, such as the closeness to victims, culturally agreed solutions, enhanced legitimacy and experience in the region.

It is also recognised that, despite the challenges faced by the region, there are strong bonds and common aspirations for human rights inspired by the historical struggles against colonization and injustice within the sub-region. Given South Asia's common history, shared cultural roots, common human rights issues, a strong history of civil society movements, common

⁵⁸ Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC), *About BIMSTEC: Structure and Membership* (BIMSTEC Secretariat, accessed 19 July 2025) <https://bimstec.org/>

⁵⁹ RICS is a group of eleven Global South countries: Brazil, Russia, India, China, South Africa, Saudi Arabia, Egypt, UAE, Ethiopia, Indonesia and Iran. It mainly aims to enhance cooperation and increase their influence in global governance. BRICS, 'About the BRICS' (BRICS, 2023) <https://brics.br/en/about-the-brics>.

⁶⁰ Charter of the South Asian Association for Regional Cooperation (adopted 8 December 1985, entered into force 15 December 1985) <https://www.saarc-sec.org/index.php/resources/publications/charter> accessed 20 July 2025.

⁶¹ SAARC Charter, Article IV.

⁶² SAARC Charter, Article V.

⁶³ SAARC Charter, Article VI.

legal and parliamentary tradition, along with a reputation for progressive jurisprudence, it can be argued that most South Asian countries have a solid foundation and a rightful claim to for establishing its own distinct regional human rights mechanism to protect and promote human rights at the sub-regional level.⁶⁴

Furthermore, the paper argues that any regional human rights system for South Asia must be up to the needs and aspirations of the peoples of the Sub-region. While the general discourse on regional human rights mechanisms has focused on state-centric models, this paper critiques the traditional top-down approach of human rights protection by considering the lived experiences of marginalized communities, ethnic minorities, and vulnerable groups. In this context, the paper emphasises that, in creating a sub-regional mechanism for South Asia, the framework should focus on better serving the people of South Asia identifying their needs and aspirations, rather than merely enhancing the international reputation of the states involved or simply filling the gap in the regional human rights protection architecture.

5.2 Significant Efforts to Establish a Regional Human Rights System

Singh specifically reviews the significant efforts to establish a South Asian human rights mechanism with special reference to regional seminars and workshops.⁶⁵ As he notes, the United Nations Commission on Human Rights, the predecessor of the UN Human Rights Council, set up a study group to explore the possibility of establishing regional human rights mechanisms in the 1960s.⁶⁶ Consequently, the UN Secretary-General advised that holding regional seminars would be the most effective method to establish such human rights mechanism. As a result, in the South Asian context, the UN organized regional seminars, including those in Colombo in 1982, Kathmandu in 1996, New Delhi in 1999, and Islamabad in 2003.

⁶⁴ *Statement on the Case for a SAARC Regional Human Rights Mechanism* (United Nations, 2011) <https://www.ohchr.org/en/statements/2011/11/case-saarc-regional-human-rights-mechanism-statement-united-nations-high> accessed on 26 September 2024.

⁶⁵ Singh (n 55).

⁶⁶ *ibid.*

The Colombo seminar,⁶⁷ the first in this series, recommended that it was too early to consider a regional arrangement at that time, given the lack of political will, which is a prerequisite for developing intergovernmental collaboration.⁶⁸ However, it is recommended to hold periodic regional and sub-regional meetings on human rights issues. The New Delhi Workshop committed to a step-by-step approach and is considering as a landmark in establishing a South Asian human rights mechanism, marking a shift from the UN workshops' original goal of 'regional arrangements' to 'regional cooperation' for promotion and protection of human rights in the Asia-Pacific region.⁶⁹

The workshop in Kathmandu aimed at establishing a regional human rights mechanism, either for the entire Asia-Pacific region or for specific sub-regions like South Asia came up with common principles and strategies for the establishment of a regional arrangement. Additionally, in 1996, members of the Asia Pacific Forum of National Human Rights Institutions and non-governmental human rights organisations convened in Kandy, Sri Lanka, with observers from UN agencies, governments and international non-governmental organisations to enhance their cooperation in the promotion and protection of human rights in the region.⁷⁰

The eleventh UN Workshop took place in Islamabad, Pakistan, which reviewed the progress in implementing the four pillars⁷¹ of the 'Tehran Framework'.⁷² The Islamabad workshop also emphasised the different

⁶⁷ United Nations Seminar on National, Local and Regional Arrangements for the Promotion and Protection of Human Rights in the Asian Region, Colombo, Sri Lanka, 21 June-2 July 1982.

⁶⁸ Singh (n 55).

⁶⁹ *ibid.*

⁷⁰ Asia Pacific Forum of National Human Rights Institutions, 'The Kandy Program of Action: Cooperation Between National Institutions and Non-Governmental Organisations' (Workshop on National Institutions and Non-Governmental Organisations, Kandy, Sri Lanka, 26-28 July 1999) <https://chr-observatories.uwazi.io/api/files/1595911788644v7kqs25h72.pdf> accessed 8 October 2024.

⁷¹ (i) Develop and strengthen national capacities; (ii) implement human rights education; (iii) establish national institutions for supervising human rights issues; and (iv) develop strategies to implement the right to development and other economic, social and cultural rights.

⁷² 'Framework for Regional Technical Co-operation in Asia Pacific' adopted in the Tehran Workshop of 1998.

human rights initiatives of SAARC, aimed at strengthening and developing regional efforts to promote and protect human rights in the South Asian region.

5.3 SAARC and Regional Cooperation for Human Rights Protection and Promotion in South Asia

Arguably, South Asia is one of the least integrated regions of the world, particularly if it is compared with other regions, such as Europe, East Asia and Southeast Asia. Ahmed contends that regional asymmetry is visible in South Asia through various indicators, such as population, economic growth, area and even military strength of South Asian countries.⁷³ It is also undeniable that South Asia is home to a wide array of inter-state conflicts, which hinder the regional corporation. In addition, politics continues to remain a significant factor that heavily constrains the effectiveness in the performance of SAARC. Some authors contend that if political differences among countries can be ignored, South Asia offers several desirable features for regional cooperation. In this context, various parties are working to reaffirm their commitment to regional cooperation through SAARC, particularly highlighting its interconnections in terms of the land and shared values of the region. The sub-region has a contiguous land mass, with several rivers crisscrossing the region, which inherently connects the region and provides a foundation for efficient cooperation'.⁷⁴ All states in South Asia, except Sri Lanka and Maldives, are in a single landmass, highlighting common physical features. The region also shares a common history, a colonial past, cultural, ethnic, and linguistic similarities, as well as common inherited legal and administrative systems. According to authors, these factors form the basis for the establishment of SAARC in 1985.⁷⁵

⁷³ Z S Ahmed, *Regionalism and Regional Security in South Asia: The Role of SAARC* (1st edn, Routledge 2013) 14 <https://doi.org/10.4324/9781315604442>.

⁷⁴ V V Desai, 'The Political Economy of Regional Cooperation in South Asia' (ADB Working Paper Series on Regional Economic Integration No 54, Asian Development Bank, July 2010) 19 <https://www.adb.org/sites/default/files/publication/28528/wp54-political-economy-south-asia.pdf>; M. Dubey. 2008. Regional Economic Integration in South Asia: Principal Issues and the Role of Political Factors in Does South Asia Exist? Prospects for Regionalism in South Asia. Mimeo.

⁷⁵ Ahmed (n 67).

The main objectives of SAARC include promoting regional cooperation, peace, stability, amity and progress among the eight South Asian countries, while adhering to the principles of the UN Charter. However, it does not have an explicit mandate to protect, fulfill and promote human rights. In this sense, SAARC faces criticism for failing as a dynamic and influential organization in the sub-region. This criticism highlights that despite the prevalence of human rights violations with limited remedies, South Asia lacks a dedicated framework that addresses its unique socio-political context. In the context, scholarly works emphasise the importance of regional human rights mechanisms in addressing specific human rights issues and recognized the 'step by step' or 'building-blocks' approach⁷⁶ towards establishing regional human rights arrangements for South Asia.

There were several discussions regarding a regional human rights mechanism during SAARC summits, the highest decision-making forum of SAARC. Among eighteen summits held to date, the Kathmandu summit held in Nepal and its outcome document known as the Kathmandu Declaration played a significant role in initiatives aimed at establishing a sub-regional human rights mechanism for South Asia.⁷⁷ Additionally, at the 16th SAARC Summit held in Thimphu, Bhutan, President Mohamed Nasheed of the Republic of the Maldives highlighted the need for SAARC to consider establishing such mechanism.

‘...SAARC should consider establishing a regional human rights mechanism, similar to the one being developed for the ASEAN region. This mechanism could help the South Asian States to promote and protect human rights and fundamental freedoms in their jurisdiction. It could ensure that international human rights laws are observed and implemented by SAARC members. And such a mechanism could help people in our region develop a common understanding of universal human rights issues and perspectives’.⁷⁸

⁷⁶ In 1998, in Teheran, a consensus was reached on the principles and a step-by-step, building blocks approach, towards the establishment of regional arrangements for the promotion and protection of human rights.

⁷⁷ Mostafa Hosain and Ershadul Karim, ‘A Research Guide on the South Asian Association for Regional Cooperation (SAARC)’ (NYU Law Global, 2023) <https://www.nyulawglobal.org/globalex/saarc1.html#saarc-summits> accessed 8 October 2024.

⁷⁸ FORUM-ASIA, ‘President of Maldives Supports the Establishment of a SAARC Human Rights Mechanism’ (3 May 2010) <https://forum-asia.org/president-of->

However, facing another setback, the 19th summit of the SAARC, which was scheduled to be held in Pakistan in 2016, was indefinitely postponed as member countries declined to participate, amid the absence of a conducive regional environment.⁷⁹

6. ISSUES, CHALLENGES AND OPPORTUNITIES FOR STABLISHING A SUB-REGIONAL HUMAN RIGHTS MECHANISM

Explaining the main reasons for the delay in establishing human rights system in South Asia Bharat Anand highlights region's legacies in human rights mechanisms, cultural taboos, stress on national building principles, political instability, fragile economies and unfavourable international economic order, inflated sovereign status, and mutual distrust among the member countries.⁸⁰

The complex nature of the South Asian region with full of problems and contradictions is a main challenge for establishing a specific human rights system. Authors note that internal conflicts, civil wars, coups and external aggression have been a continuous part of South Asian history.⁸¹ In addition, South Asian societies are fragmented along various lines, such as religion, sects, caste, ethnicity, gender, region, language, race, economic status, and more. Furthermore, South Asia is identified as a home to deeply embed vulnerabilities, including structural poverty, social exclusion, internal political crises, hostility of governments towards human rights defenders, and politicised and corrupted institutions and officials.⁸² For example, the territorial dispute between Pakistan and India over Jammu

maldives-supports-the-establishment-of-a-saarc-human-rights-mechanism-2/
accessed 8 October 2024.

⁷⁹ J Bhattacharjee, 'SAARC vs BIMSTEC : The Search for the Ideal Platform for Regional Cooperation' (2023) Observer Research Foundation <https://orfonline.org/public/uploads/posts/pdf/20230817234958.pdf> accessed 25 November 2024; Mahwish Hafeez, '2016 SAARC Summit: Future of Regional Cooperation in South Asia' (2016) 36 *Strategic Studies* 38–57 <https://www.jstor.org/stable/48535960>; Manzoor Ahmad, 'SAARC Summits 1985-2016: The Cancellation Phenomenon' (2017) XVII *IPRI Journal* 1, 43–71 <https://ipripak.org/wp-content/uploads/2017/04/Article-No.-3w17.pdf>.

⁸⁰ Dhaliwal (n 28).

⁸¹ *ibid.*

⁸² Singh (n 55).

and Kashmir, accompanied by mutual allegations of state-sponsored terrorism and human rights abuses, Pakistan's experience with military rule, lack of democracy and human rights violations, the large-scale and systematic human rights violations in Afghanistan, stemming from conflict and civil war⁸³ and recent protests and unrest in response to unnecessary and disproportionate use of force by security forces in Bangladesh⁸⁴ further complicate the situation. All of these incidents highlight the complexity of the region in developing a specifically tailored human rights system that balances conflicting interests.

South Asia also faces enormous geo-political hurdles. Suspicion and mistrust among its member countries have been a major challenge, often hindering regional cooperation from the very beginning.⁸⁵ In its nearly four decades of history, SAARC annual summits have been postponed 11 times due to bilateral or internal political reasons.⁸⁶ In discussions about establishing a specific human rights mechanism, some believe that it is not realistic for South Asian states to agree on a human rights mechanism, given that their political needs often conflict with such an initiative.

The domestic issues of the States are also detrimental to establishing a sub-regional human rights mechanism, given the increased powers of law enforcement authorities, which results in infringements of human rights under the guise of counter-terrorism initiatives, along with a lack of judicial engagement regarding state impunity, among other issues. In this context, it has been emphasized that coherent ideas and standards need to be established in political discourse among South Asian states before

⁸³ *Human Rights and Peace in the Asia-Pacific Region* (United Nations University, 2010) <https://collections.unu.edu/eserv/UNU:2441/pdf9280810936.pdf373-376> accessed on 26 September 2024.

⁸⁴ *Preliminary Analysis of Recent Protests and Unrest in Bangladesh* (Office of the United Nations High Commissioner for Human Rights, 2021) <https://www.ohchr.org/en/documents/country-reports/preliminary-analysis-recent-protests-and-unrest-bangladesh#:~:text=Summary,violations%20committed%20by%20security%20forces> accessed on 26 September 2024.

⁸⁵ J Bhattacharjee, 'SAARC vs BIMSTEC : The Search for the Ideal Platform for Regional Cooperation' (2023) Observer Research Foundation <https://orfonline.org/public/uploads/posts/pdf/20230817234958.pdf> accessed 25 November 2024.

⁸⁶ Manzoor Ahmad, 'SAARC Summits 1985-2016: The Cancellation Phenomenon' (2017) XVII *IPRI Journal* 1, 43–71 <https://ipripak.org/wp-content/uploads/2017/04/Article-No.-3w17.pdf>.

formal mechanism for monitoring human rights can be set up, similar to the process that unfolded in Europe after the Second World War.⁸⁷

Despite South Asian States having signed several conventions and engaged in various agreements on social issues, there is no umbrella instrument specifically addressing human rights and fundamental freedoms in the sub-region. For this reason, specifically SAARC has been criticised for its ineffectiveness in promoting and protecting human rights. To date, the primary means of human rights protection at the SAARC level consists of various cooperative human rights treaties and declarations including the SAARC Convention on Preventing and Combating Trafficking in Women,⁸⁸ and SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia.⁸⁹ There is also a Social Charter⁹⁰ that aims, among other objectives, to promote universal respect for and observance and protection of human rights and fundamental freedoms.⁹¹ However, the lack of a specific and comprehensive sub-regional human rights instrument, one that can specifically address region-specific human

⁸⁷ *Human Rights System for SAARC: Problems and Perspectives* (Human Rights in Asia) <https://www.hurights.or.jp/archives/focus/section3/2014/06/human-rights-system-for-saarc-problems-and-perspectives.html> accessed on 26 September 2024; Jina Kim, 'Development of Regional Human Rights Regime: Prospects for and Implications to Asia' (2013) 59 https://www.sylff.org/wp-content/uploads/2009/03/sylff_p57-1022.pdf accessed 12 December 2013.

⁸⁸ *SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution* (SAARC) <https://www.saarc-sec.org/index.php/resources/agreements-conventions/50-saarc-convention-on-preventing-and-combating-traffic-king-in-women-and-children-for-prostitution/file> accessed on 26 September 2024.

⁸⁹ *SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia* (SAARC) <https://www.saarc-sec.org/index.php/resources/agreements-conventions/51-saarc-convention-on-regional-arrangements-for-the-promotion-of-child-welfare-in-south-asia/file> accessed on 26 September 2024.

⁹⁰ SAARC Social Charter (SAARC) <https://www.saarc-sec.org/index.php/resources/agreements-conventions/54-saarc-social-charter/file> accessed on September 2024.

⁹¹ Article II, Principles, Goals and Objectives, xii - Promote universal respect for and observance and protection of human rights and fundamental freedoms for all, in particular the right to development; promote the effective exercise of rights and the discharge of responsibilities in a balanced manner at all levels of society; promote gender equity; promote the welfare and interest of children and youth; promote social integration and strengthen civil societies.

rights issues, is a significant drawback, amidst a serious human rights crisis in the region.⁹²

Despite the above issues and challenges, South Asia also has great prospects for establishing a sub-regional human rights system. For this, existing regional arrangements should be strengthened concerning its challenges, mainly its weaker unity and the uniqueness of South Asian region. For such an initiative, SAARC may draw from the successes and weaknesses of the human rights systems of the UN and other regions. First, SAARC must take up human rights clearly onto its agenda. In Dhaliwal's words, the beauty of SAARC is that it is a unique organisation that was conceived in turbulent times in South Asia and that could cross over mutual distrust and anticipation of the members'.⁹³

Any international or regional human rights system has been developed and centered on inter-governmental organizations. In south Asia, SAARC is the regional organization, in that nature, which already deals with human rights protection indirectly to some extent. Therefore, it is primarily undeniable that SAARC can be strengthened as the main forum for human rights protection, strategically overcoming its current challenges. Arguably, this reform should begin with the SAARC charter, which currently makes no mention of human rights, to better reflect the demands and concerns pertaining to human rights within the region. Starting from the preamble of the SAARC Charter, it emphasise that the members of SAARC are 'desirous of promoting peace, stability, amity and progress in the region through strict adherence to the principles of the United Nations Charter.' Therefore, it can be argued that SAARC has indirectly accepted the human rights related objectives of the UN Charter, which it should bring to the forefront through a sub-regional mechanism for human rights.⁹⁴

Additionally, even though SAARC lacks a clear agenda for human rights, the organization can utilise the existing provisions, to process the incorporation of human rights protection in its agenda. For example, Article IV of the SAARC Charter provides for an organ called the Council

⁹² *Establishing a Regional Human Rights Mechanism: A New Identity for SAARC* (South Asian Rights) <https://southasianrights.org/a-new-identity-for-saarc-establishing-a-regional-human-rights-mechanism/> accessed on 26 September 2024.

⁹³ Dhaliwal (n 28).

⁹⁴ Dhaliwal (n 28).

of Ministers, which is responsible for formulating policies of the organisation, reviewing the progress of cooperation and, most importantly, has the mandate to decide on the new areas of cooperation,⁹⁵ arguably including the corporation in human rights protection.

Secondly, South Asia is the only region as defined by the United Nations which is without a human rights instrument of its own. In this context, it is high time to develop a comprehensive human rights instrument for the sub-region considering all the issues and values of the region. Authors suggest that South Asia should first adopt a non-binding regional declaration on human rights, addressing regional preferences. This declaration would help promote human rights in South Asia and, over time, pave the way for a binding regional treaty. Designing such an instrument requires considering diverse realities of the region from all angles, including socio-political, cultural and economic factors. In other words, the declaration should specifically reflect the unique human rights approach of the sub-region. The South Asian society in general is more inclined towards the community and group rights rather than the individual human rights. Further, there is more emphasis laid on the duties of individuals towards society in Eastern view of human rights.⁹⁶

It is also undeniable that several countries in the region are still governed by monarchies, authoritarian regimes or military governments, which often leads to a distrust of the protection of civil and political rights such as freedom of thought, expression, association and assembly. Furthermore, economic vulnerabilities also persist in South Asian countries, contributing significantly to the denial of human rights. In this context, incorporating both civil, political as well as economic and social rights should be a key focus of a regional human rights instrument.

Thirdly, and most importantly as Dhaliwal points out, the South Asian countries need to trust each other more, and they need to understand that in a global world a state can progress only if the others around it are also progressing. Mutual corporation and mutual respect is a major prerequisite for building up a common regional mechanism for human rights culture in South Asia.

⁹⁵ Article IV (c) of the SAARC Charter.

⁹⁶ Dhaliwal (n 28).

7. CONCLUSION

All regions currently with regional human rights systems have faced or continue to face significant challenges, which are similarly reflective of the present-day South Asia, where issues such as terrorism, inter-state conflicts, and nuclear threats have marked the region as a conflict zone.⁹⁷ For Instance, Europe, America and Africa also have a history marked by divisions and conflicts. Nevertheless, what is important is that all these regions have managed to establish a system for human rights protection and maintain, demonstrating resilience in the face of negative features of regionalism. In this context, this paper explores the necessity of establishing a dedicated sub-regional human rights mechanism for South Asia, given the unique challenges of the region. It examines the existing regional human rights systems globally, focusing on their effectiveness and identifying gaps in the current frameworks. The analysis of the paper also highlights the limitations of South Asia's existing human rights protections, which often fail to address the specific socio-political and cultural dynamics of the region.

For the success of a regional human rights system, it is essential, first and foremost, to have a strong intergovernmental organization within the South Asian sub-region. Such an organisation is both a present necessity and a future opportunity, provided it is designed sensibly, incorporating the lessons learned from other regions and sub-regions. It is identified that currently functioning human rights mechanisms in Europe, Americas and Africa has revolved around such a regional organization with a strong mandate in human rights protection. In the South Asian context, while researchers criticise SAARC for its extremely slow pace, very limited achievements, lack of consensus among the member states, inability to promote regional cooperation and solidarity regarding the guiding force towards regionalism,⁹⁸ this paper argues that transforming the same into an effective institution could lay the foundation for a fully-fledged human rights mechanism. Such reformulations must consider the factors influencing the establishment of such a mechanism, including socio-economic, political, and geopolitical considerations, while acknowledging both challenges and potential opportunities. In this case, a comparative analysis of other regional systems, such as those in Europe, the Americas,

⁹⁷ *ibid.*

⁹⁸ Establishing a Regional Human Rights Mechanism: A New Identity for SAARC (n 85).

and Africa, or even emerging systems including Arab system and ASEAN based system in Southeast Asia, offers valuable lessons to better develop a framework for South Asia. In conclusion, drawing on these lessons, this paper highlights the need for addressing the identified challenges and opportunities in establishing a sub-regional human rights system. It proposes a tailored model that addresses the unique concerns of the region while complementing international human rights standards.