

Regional Development of Human Rights in South Asia

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Abstract

Various human rights initiatives and developments have emerged in South Asia in the past few years. These initiatives have been taken at the regional as well as national level. However, there exist various challenges because of which this region still lacks a regional human rights mechanism unlike any other region of the world. Thus, this paper explores the recent developments of human rights in South Asia. It studies the development of human rights in each South Asian state particularly. Further, this paper analyzes the possible causative factors behind the slow pace of human rights development in South Asia alongside the failure to develop a regional human rights instrument. The paper does not address the initiatives taken by non-governmental bodies or civil societies working in South Asia to develop the human rights perspectives. Only the governmental and inter-governmental measures have been taken into consideration.

1. Conceptual understanding

Human rights are inherent rights or entitlements acquired by every individual by virtue of being a member of the human society. These rights belong to everyone irrespective of their race, sex, nationality, ethnicity, language, religion, or any other status.¹ States have the utmost duty to guarantee and safeguard these rights to their people. Thus, they collaborate on regional as well as international levels in order to respect, protect, promote and fulfill these rights. Such form of co-operation has been encouraged in the regional as well as international forums and instruments² since all states may not afford to safeguard these rights on their own without the assistance of the other state.

As this paper deals with the development of human rights in the South Asian region, it is pivotal to understand the geographical formation of South Asia and its member countries primarily.

South Asia is a clearly identifiable region with Himalayas in the North and Indian Ocean

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¹ Jean Marc Coicaud, Micheal Doyle & Anne Marie, *The Globalization of Human Rights*, United Nations University Press, New York, 2003, p. 25.

² Azizur Rahman Chowdhury & Md. Jahid Hossain Bhuiyan, *An Introduction to International Human Rights Law*, Brill Publishers, Netherlands, 2010, p. 191.

in the south and the extension from the Persian Gulf to the Straits of Malacca.³ This region consists of eight countries, Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. All the states located in this region share their political boundaries with each other except Sri Lanka and Maldives which are secluded from the major landmass by Bay of Bengal and Arabian Sea respectively. All these eight countries share a long common history as well as similar traits pertaining to society, culture, religion and politics.⁴

2. Human rights in South Asia

In order to analyze the current trends of development of human rights in South Asia, it is essential to study the development from two perspectives i.e. regional and national. The regional perspective projects collective efforts of the nations in protecting the human rights. And, the national perspective portrays the steps taken by the member states individually in order to align with the collective human rights framework developed by them at the regional level.

- **At regional level**

South Asian Association for Regional Co-operation (SAARC) is the first regional mechanism established in South Asian Region that is believed to have addressed the notions of human rights. The charter to SAARC was signed on 8 December 1985. Although the charter does not entail the provisions on human rights expressly, one of the objectives of the SAARC, as specified in the Charter is “to promote the welfare of the people of South Asia and to improve their quality of life.”⁵ This alludes to a common vision of the entire region in relation to the human rights issues. Similarly, two conventions were framed under the SAARC framework in 2002 which tend to deal with human rights i.e. the Convention On Preventing and Combating Trafficking in Women and children for Prostitution and the Convention on Regional arrangements for the promotion of Child Welfare in South Asia.

In 2005, SAARC introduced the Social Charter which makes a number of commitments in order to strengthen economic, cultural and social rights in South Asia.⁶ It reaffirms the essence of promoting universal respect for, observance and protection of human rights and fundamental freedoms for all in Article II(2)(xi) of the Charter. It specifically focuses on the rights of women, children, elderly people and youths.

In 2011, the Charter on Democracy was designed by the SAARC to promote the welfare of people of the region, strengthen democratic governments and

³ R.P. Anand, *South Asia: In Search of a Regional Identity*, Banyan Publications, New Delhi, 1991, p. 1.

⁴ Raghuvir Jalote, *Archeological History of Early South Asia*, Cyber Tech Publications, New Delhi, 2010, pp. 176-177.

⁵ Charter of the South Asian Association for Regional Cooperation, 1985, art. 1(a).

⁶ Rajiv Shah, ‘SAARC is world’s only regional organization not having human rights body to tackle issues related to International Covenants’, 26 August 2014, Counterview.org available at <https://counterview.org/2014/08/26/saarc-is-worlds-only-regional-organization-not-having-human-rights-body-to-tackle-is-sues-related-to-the-international-covenants/>, accessed on 8 April 2019.

implement the SAARC charter accordingly. It recognizes the significance of fundamental human rights and dignity of human persons enunciated in the Universal Declaration on Human Rights in its preamble and presents commitments of all SAARC countries to comply with the principles of human rights.⁷

These are some collective legislative measures taken by the South Asian nations on a regional level in order to develop human rights of its people. However, these measures cannot conceal the fact that South Asia is the only region of the major regions in the world without a regional charter of human rights and the machinery to enforce it.⁸ Although various conferences have been held at the regional as well as international levels for the establishment of regional human rights charter and institutions consistently, these have failed to attain the specified objective.

Notable reasons behind this include a lack of spirit of regionalism among the member states owing to years-long wars and political tensions amongst them, regional differences bolstering cultural relativism and never-ending rivalry between India and Pakistan. Section 4 of the paper deals with these areas in detail.

- **At national level**

- a) **Nepal**

If we are to see the historical background of Nepal, it is visible that Nepal has always been persistent in principle, towards its commitment of protecting human rights through the formulation of various legal instruments identifying the same. The Civil Rights Act of 1955 was the first legislative mechanism introduced at the national level to guarantee basic rights to its citizens. At present, the Constitution of Nepal, 2072 (2015) governs the issue of human rights nationwide.

The commitment of Nepal to protect human rights is also visible in its judicial decisions wherein the Supreme Court has apparently adjudged against human rights violations in almost all occasions. Some of the remarkable Court judgments include *Sunil Babu Panta v. Nepal Government*⁹, *Surya Prasad Sharma Dhungel v. Godawari Marvel Industries Pvt. Ltd*¹⁰, *Meera Dhungana and Meera Parajuli v. HMG Ministry of Law, Justice and Parliamentary Affairs*¹¹, etc.

In the case of *Sunil Babu Panta v. Nepal Government*, a petition was filed before the Supreme Court contesting the constant reluctance of Nepali administrative authorities in issuing citizenship certificates to individuals who identified themselves as third gender. Addressing the issue raised by the petitioners, the Court pronounced that the State had discriminated against its citizens on grounds of sexual orientation and gender identity owing to its unwillingness in recognizing non-

⁷ SAARC Charter of Democracy, 2011, Preamble.

⁸ Abul Hasnat Monjurul Kabir, 'Establishing National Human Rights Commissions in South Asia: A critical analysis of the processes and prospects', *Asia Pacific Journal on Human Rights and the Law*, p.1, volume 2, 2001, p.1.

⁹ *Sunil Babu Panta v. Nepal Government*, NKP 2064(2007).

¹⁰ *Surya Prasad Sharma Dhungel v. Godawari Marble Industries Pvt. Ltd*, NKP 2052(1995).

¹¹ *Meera Dhungana and Meera Parajuli v. HMG Ministry of Law, Justice and Parliamentary Affairs*, NKP 2052 (1996).

binary genders. As a result, the ruling government was ordered to make appropriate arrangements for making new laws and amending existing ones to abolish such form of discrimination. Further, the Court also shed light on decriminalization and de-stigmatization of same-sex marriage which was then penalized by the existing laws. The Court directed the Government to form a special committee for carrying out necessary research on issues relating to same-sex marriage.

The case of *Surya Prasad Sharma Dhungel v. Godamari Marble Industries Pvt. Ltd* was the first dispute involving the matter of environment and human rights brought before a judicial institution. The petition was filed against respondents' industrial activities resulting to excessive environmental degradation thereby threatening lives, properties and health of local residents. The Court, in enforcing fundamental rights of people, iterated that a clean and healthy environment was an integral part of right to life secured in Article 11(1) of the Constitution of the Kingdom of Nepal, 2047 (1990). Therefore, it could not be breached in any manner.

The case of *Meera Dhungana and Meera Parajuli v. HMG Ministry of Law, Justice and Parliamentary Affairs* is one of the most famous cases in the judicial history of Nepal to have initiated a point of discussion on legislative reform for gender equality, more specifically equality in terms of right to property. Pursuant to the directive issued by the Court to the government for reforming laws disfavoring women's property rights, the eleventh amendment was introduced in the Civil code, 2020 according to which unmarried daughters were no longer required to reach the age of 35 for claiming parental property.

Despite all these legislative and judicial mechanisms for the enforcement of human rights, there still exists a wide range of unaddressed and unsolved issues relating to human rights in Nepal. One of such issues is the killing of 13,000 people and forced disappearance of around 1,300 people during the country's decade-long conflict¹² from 1996-2006. State inaction against the same shows the defeat of transitional justice and various rights associated with it.

Another issue is the inability of Nepalese government in protecting the rights of its migrant workers from abusive recruitment agencies within the nation as a result of which many workers are victims of forced labor and other abusive conditions.¹³ Similarly, there are various reported human rights violations during elections in Nepal.¹⁴ The security forces are often alleged for using greater degree of force while dealing with crowds, protests and campaigns at the time of elections. This has led to multiple deaths in past few years.

Adding to that, gender-based discriminations (targeted towards women as well as people belonging to LGBTQI⁺¹⁵ community) are still rampant irrespective of the numerous legislations and policies introduced in the past few years addressing

¹² Human Rights Watch, 'World Report 2018: Events of Nepal in 2017' available at <https://www.hrw.org/world-report/2018/country-chapters/nepal>, accessed on 8 April 2019.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Acronym for lesbian, gay, bisexual, transgender, intersex, queer/questioning, asexual and other such terms that people use to describe their experiences of their gender, sexuality and physiological sex characteristics.

those. Cases of sexual offences such as eve teasing, rape and sexual harassment are increasing every day.¹⁶ The practice of demanding dowry has not been put to an end. Administrative authorities are still hesitant when it comes to issuing citizenship certificates to individuals under the names of their mothers.¹⁷ The crucial reason behind all of these is an ineffective execution of the formulated laws and court decisions.

For an instance; rape is an offence of such nature that cannot be settled through mediation as per the National Criminal Procedure Code, 2074 (2017). However, police officials themselves in many rape cases are found deliberating for reconciliation between the parties.¹⁸

Similarly, if we are to assess the implementation of court orders or decisions, those are downplayed too. The fact that no substantive measure has been taken by Nepal Government to legalize same-sex marriage in Nepal even after 14 years of issuing of a directive order by the Supreme Court to accommodate existing laws in a manner to address marital rights of sexual minorities through formation of a committee is another instance of lack of implementation of laws and policies. These clearly show how Nepal has failed at the national level to enforce its human rights commitments as a member country to SAARC.

b) India

The Constitution of India adopted in 1949 guarantees the fundamental as well as constitutional rights to its citizens. The Judiciary has also played an active role in protecting these rights against violations in numerous cases. Some of these cases are *Olga Tellis v. Bombay Municipal Corporation*¹⁹, *Vishakha & Ors. v. State of Rajasthan*²⁰, *Naaz Foundation v. NCT*²¹, *NALSA v. Union of India*²², etc.

In spite of all these legislative enactments and judicial interpretations made over years, the violations of human rights in various parts of the country are still unheard and unsolved. Religious violence²³ is a triggering factor of human rights violation in India. As per the report of Human Rights Watch 2018, the government has failed to prevent mob attacks on religious minorities. Some political leaders of the governing party themselves are alleged to have oppressed other religious groups

¹⁶ Equality Now, 'Ending Sexual Violence in South Asia' available at <https://www.equalitynow.org/ending-sexual-violence-in-south-asia/>, accessed on 12 February 2022.

¹⁷ South Asia Monitor, 'Children of single mothers in Nepal might still face problems in getting citizenship', 10 June 2021, available at <https://www.southasiamonitor.org/nepal/children-single-mothers-nepal-might-still-face-problems-getting-citizenship>, accessed on 12 February 2022.

¹⁸ Himalayan News Service, 'Police accused of settling rape case through mediation', *The Himalayan Times*, Kathmandu, 17 March 2018, available at <https://thehimalayantimes.com/nepal/police-accused-of-settling-rape-case-through-mediation>, accessed on 12 February 2022.

¹⁹ *Olga Tellis v. Bombay Municipal Corporation*, Supreme Court of India, 1985, AIR.

²⁰ *Vishakha & others v State of Rajasthan*, Supreme Court of India, 1997, AIR.

²¹ *Naaz Foundation v. NCT*, Delhi High Court, 2009.

²² *NALSA v. Union of India*, Supreme Court of India, 2014, AIR.

²³ Human Rights Watch, 'World Report 2021: India Events of 2020', available at <https://www.hrw.org/world-report/2021/country-chapters/india#>, accessed on 12 February 2020.

and communities in the name of promoting Hindu supremacy.²⁴

This has clearly interfered with the people's right to religion. Similarly, security forces are accused of torture and extrajudicial killings especially in the states of Uttar Pradesh, Tamil Nadu, and Haryana.²⁵ Likewise, the government of India has also lagged behind in ensuring women's safety. Numerous cases of rapes, sexual harassment and violence are reported every year. However, there has been no decline in any of these crime rates.

c) Afghanistan

Afghanistan has a long history of monarchical rule. Given that the country is strictly run by extreme interpretation of Islamic values and norms, the situation of human rights is comparatively vulnerable in Afghanistan. The Constitution adopted in 2004 has recognized several human rights. However, the issue of implementation of these rights is critical. Discrimination against women has always been a huge problem in Afghanistan. It has turned into a cultural trait of the country.

Women are strictly required to remain covered from head-to-toe in garment known as the *burqa*.²⁶ The other issue is an escalating rate of attacks on civilians. More than 10,000 civilians were killed or injured during the armed conflict in 2018.²⁷ But, the government has not taken any measure to mitigate rampant bombings and killings by Islamic State of Khorasan Province (ISKP) also known as ISIS which have led to such massive killings and violation of human rights. Besides these, torture and elections-related violence are also key instances of human rights violations in the country.

The situation of human rights has further worsened after Taliban took over Afghanistan in 2021. Media freedom and women's rights have been largely attacked.²⁸ Many secondary schools for girls have been shut down and women have been forbidden from working.²⁹ Nearly 70% of media houses have been closed.³⁰ The rates of civilian attacks and consequent deaths have surged dramatically.³¹

d) Bangladesh

²⁴ Ibid.

²⁵ Human Rights Watch, 'World Report 2019: Events of 2018', available at <https://bit.ly/36aS22T>, accessed on 12 February 2020.

²⁶ Adamintia Pollis & Peter Schwab, *Human Rights: New Perspectives, New Realities*, Viva Books, New Delhi, 2002, pp. 75-77.

²⁷ Huo Jingnan, 'More Than 10,000 Civilians Injured Or Killed In Afghanistan Last Year, U.N. Say', *npr*, 22 February 2020 available at <https://www.npr.org/2020/02/22/808463197/more-than-10-000-civilians-injured-or-killed-in-afghanistan-last-year-u-n-says>, accessed on 12 February 2020.

²⁸ Human Rights Watch, 'Afghanistan: Taliban Takeover Worsens Rights Crisis', 13 January 2022 available at <https://www.hrw.org/news/2022/01/13/afghanistan-taliban-takeover-worsens-rights-crisis>, accessed on 12 February 2022.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

After an era of military-dominated rule, Bangladesh stands as a democratic nation in South Asia today. It has enshrined the fundamental values of human rights in its Constitution implemented in 1972. It has also constituted a criminal court to monitor the war crimes committed during the formation of the nation. This shows the standpoint of the government towards providing justice to those whose rights had been violated as a result of the war. The government has also enacted various laws addressing the human rights issues i.e. Anti-Dowry Prohibition Act in 1980, the Cruelty to Women Law in 1983 and the Women and Children Repression Prevention Act in 2000. However, the enforcement of these laws is weak.³²

Today, attacks on peaceful protestors and media have become a significant problem in Bangladesh. The unlawful detention of photographer-activist Shahidul Alam for 107 days and the detention of protesting students demanding road safety in 2018 have been criticized globally. However, the government has neglected these incidents. Similarly, Bangladesh continues to have one of the highest rates of child marriage in the world.

Most importantly, regarding the ongoing Rohingya refugee crisis, although Bangladesh has provided refuge to more than a million Rohingya refugees, it has failed to avail basic human rights to them.³³ They have been denied refugee status and their freedom of movement beyond the refugee camps has also been limited. Reports of abuses, kidnapping and trafficking of the refugees within the camps have been overshadowed.³⁴ Furthermore, the government has not been able to repatriate and re-integrate the refugees to their respective residences. This clearly shows the attitude of human rights protection of Bangladesh towards non-citizens.

e) Bhutan

Bhutan is a constitutional monarchical state located in South Asia. The Constitution of Bhutan enacted in 2008 underlines various fundamental rights of Bhutanese citizens. The situation of human rights is comparatively better in Bhutan however, there are few reports of human rights violations in Bhutan that cannot be ignored. One of such reports is the treatment of *Lhotsampa* people in Bhutan. *Lhotsampa* people are of Nepalese descent/ origin inhabiting the Southern parts of Bhutan. Many of these people have sought asylum in Nepal as refugees due to constant discrimination and ill treatment by the majority tribe.

f) Sri Lanka

The Democratic Socialist Republic of Sri Lanka is situated on an island covering approximately 65,630 kilometers in the Indian Ocean.³⁵ It is operated by the Constitution promulgated in 1978. Like all other members of the SAARC, Sri

³² V. P. Srivastva, *Human Rights: Issues and Implementations*, Indian Publishers, Delhi, volume 2, 2004, p. 1291.

³³ Rudabeh Shahid, 'Assessing the treatment of Rohingya refugees in Bangladesh', *Atlantic Council*, 25 September 2019, available at <https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/assessing-the-treatment-of-rohingya-refugees-in-bangladesh/>, accessed on 12 February 2022.

³⁴ Ibid.

³⁵ Constitution Net Organization, 'Constitutional History of Sri Lanka', available at <http://constitutionnet.org/country/constitutional-history-sri-lanka>, accessed on 8 April 2019.

Lanka has also stipulated the provisions of fundamental rights to its citizens in the prevailing Constitution. However, there are various matters of human rights violations in Sri Lanka. Violence against women and child prostitution is rampant in the country. Violence against minorities, specifically against Muslims, is a common issue.³⁶ Sri Lanka has also failed in providing transitional justice to its people although the number of missing or disappeared persons in Sri Lanka ranks among the highest in the world i.e. estimated to be between 60,000 and 100,000 since the late 1980s.³⁷ In addition to this, it has also criminalized same-sex conduct.

g) Maldives

The Constitution of Maldives which was implemented in 2008 is considered to be the most democratic one in its entire constitutional history.³⁸ It provides for the fundamental rights of its citizens as well as a Human Rights Commission for its enforcement. Although there have been recent developments in Maldives in the field of human rights, the country still faces numerous problems of human rights violations. Discrimination against minorities and women exists in Maldives.³⁹ The Maldivian government has not taken any measures in effectively investigating and combatting trafficking of women and children in Maldives. Similarly, the government has no protection for refugees.⁴⁰ Provided that Maldives is an Islamic state, those who oppose Islamic ideology are often harassed and attacked by the extremist Muslim groups.⁴¹

h) Pakistan

Pakistan is the second largest country in South Asia after India. It is an Islamic state. Thus, its constitution is guided by strict Islamic norms and values. The Constitution of the Islamic Republic of Pakistan was promulgated in 1973. It recognizes fundamental rights of its people. However, there are various limitations and restrictions upon these rights.

For example, minorities cannot vote in Muslim constituencies.⁴² Insensitivity towards women and minorities is a striking problem of human rights violation in Pakistan.⁴³ Other problems include religious intolerance, extra-judicial killings,

³⁶ Amnesty International, 'Sri Lanka: Authorities must end violence and discrimination against Muslims', 18 October 2021 available at <https://www.amnesty.org/en/latest/news/2021/10/sri-lanka-authorities-must-end-violence-and-discrimination-against-muslims/>, accessed on 12 February 2022.

³⁷ Human Rights Watch, 'World Report 2019: Events of Sri Lanka in 2018' available at <https://www.hrw.org/world-report/2019/country-chapters/sri-lanka>, accessed on 8 April 2019.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ V.T. Patil, *Human Rights Developments in South Asia*, Authors Press, Delhi, 2003, p. 318.

⁴¹ Ibid.

⁴² Barbara Crossette, 'Pakistan's Minorities Face Voting Restrictions', *The New York Times*, 23 October 1990 available at <https://www.nytimes.com/1990/10/23/world/pakistan-s-minorities-face-voting-restrictions.html>, accessed on 12 February 2022.

⁴³ Mahwish Rabia et al., 'Gender Inequality: A Case Study in Pakistan', *Open Journal of Social Sciences*, volume 7, March 2019 available at <https://www.scirp.org/journal/paperinformation.aspx?paperid=91363>, accessed on 12 February 2022.

forced disappearances and torture.⁴⁴ Terrorist bombings are constant threats to human rights. Many civilians get killed every year as a result of such attacks.⁴⁵ Besides these, increasing violence against transgender and intersex women has also emerged as a growing issue of human rights violation in Pakistan. According to the report of Human Rights Watch in 2019, 479 attacks against transgender women were reported in Khyber-Pakhtunkhwa province in 2018.⁴⁶

Amidst all these violations, a major development observed in Pakistan is the approval of a law guaranteeing basic rights for transgender citizens and outlawing discrimination by employers. This law grants individuals the right to self-identity as to their sexuality.

3. Recent developments

Although there are various unsolved areas of human rights in South Asian region, a number of developments have been observed recently which shows the potential of this region to advance in the field of human rights protection. Some of these developments have been discussed below:

a) Sexual orientation and gender identity

The concept of third gender was regarded as a taboo in most parts of South Asia few years before. But, today, the outlook of South Asia countries towards gender identity and sexual orientation has begun shifting towards a positive vector. In 2007, the Nepalese Supreme court rendered an order regarding the issuance of citizenship certificates and passports to individuals under the category of “third gender.” In 2009, the Indian Supreme court decriminalized homosexual acts under the Indian penal Code. Later, in 2014, the court also recognized the rights of transgender people as “third gender.” In 2018, Pakistani government passed a new law which guarantees basic rights to transgender citizens. The government of Bangladesh has also legally recognized a third gender category for its citizens.

b) Criminalization of marital rape

Deeply rooted in orthodox, patriarchal values, majority of states in South Asia⁴⁷ until past few years used to consider marriage a sacred bond wherein any form of misconduct by either party was never thought to be criminal or illegal. One such misconduct was marital rape. However, commendably, few South Asian states have criminalized rape in marital relations. Bhutan and Nepal have legally recognized marital rape as an offence in all circumstances.⁴⁸

⁴⁴ Human Rights Watch, ‘World Report 2018: Pakistan Events of 2017’, available at <https://www.hrw.org/world-report/2018/country-chapters/pakistan>, accessed on 12 February 2022.

⁴⁵ Ibid.

⁴⁶ Human Rights Watch, ‘World Report 2019: Events of Pakistan in 2018’ available <https://www.hrw.org/world-report/2019/country-chapters/pakistan>, accessed on 8 April 2019.

⁴⁷ iProbono, ‘Marital Rape: South Asia Factsheet’, available at <https://i-probono.com/download/?id=5805>, accessed on 12 February 2022.

⁴⁸ Equality Now, ‘Rape Laws Across South Asia Insufficient, Inconsistent, And Poorly Enforced, Leaving

c) **Kathmandu Declaration on Addressing Impunity and Realizing Human Rights in South Asia**

This declaration was adopted on 11 April 2018 in Kathmandu, Nepal. It affirms the commitments of South Asian region towards strengthening transitional justice, prosecuting gross human rights violations, combatting terrorism, reviewing national security policies, protecting fundamental rights, co-operating for the protection of rights of migrant workers, refugees, asylum seekers and the protection of all human rights defenders and media throughout the region. Most importantly, this declaration undertakes to study the possibility of establishing a regional human rights mechanism in the SAARC region.

d) **Growth of national human rights institutions**

Despite the fact that there are various problems of human rights enforcement lurking in South Asian region followed by an absence of a regional human rights mechanism, there has been a recorded growth in the number of human rights institutions within the nations.⁴⁹ Majority of countries in South Asia have established national human rights commissions inside their territory in order to monitor the human rights violations.

What are the implications of growth in such human rights institutions at national level? I think it is also worth looking into the cross-country collaboration between the human rights institutions aspiring towards better protection of human rights in the region.

4. Challenges to human rights development in South Asia

These are some identified factors which have obstructed the possible development of human rights in South Asia:

a) **Lack of spirit of regionalism**

A prominent reason behind the successes of other regions of the world such as European Union, African Union or Organization of American States is their sense of regionalism amongst each other. Contrarily, South Asian nations lack mutual trust and co-operation within themselves due to past invasions, conflicts and wars.⁵⁰ They have the tendency of building relationships with countries outside the region than with their neighbors and other SAARC member states. According to many scholars, South Asia is a region only due to its geopolitical location and not because of affinity between the countries.⁵¹ Thus, states in this region have an individualistic

Women at Heightened Risk of Sexual Violence', available at https://www.equalitynow.org/press_release/rape_laws_south_asia_april_2021/ accessed on 12 February 2022.

⁴⁹ Kabir (n 8), p.17.

⁵⁰ Ayesha Zalat, *Democracy and Authoritarianism in South Asia: Comparative and Historical Perspective*, Cambridge University Press, Cambridge, 1995, pp. 1-28.

⁵¹ E. Sridharan, *International Relations Theory and South Asia*, Oxford University Press, New Delhi, volume 2,

approach to all initiatives taken at the regional level which creates an atmosphere of mistrust.

b) Religious differences

One of the common areas of dispute and conflict in most parts of South Asia is religion. This region has multiplicity of religions i.e. Hindu, Islam, Buddhism, Christianity, Jainism, Sikhism and so on. Instead of creating an environment of religious tolerance, majority religion in most of the states tend to dominate the minority religion. In some countries, even the governing political leaders condemn the minority religion thereby inviting civil wars and conflicts.⁵² Thus, religious differences have also posed serious challenges to the development of human rights.

c) Cultural relativism

Further, a cultural relativist attitude among the states also poses a serious challenge to human rights in South Asia. Rather than upholding the fact that basic human rights should be universally respected, core religious states such as India, Pakistan, Afghanistan and Bangladesh prefer defining human rights from a relativist perspective.⁵³ This motivates them to justify gross human rights violations such as rape, honor killing, polygamy, marital rape and restriction in human liberty using religious interpretations or based on what their cultures say on that regard. For an instance, Pakistan conveniently justifies polygamy, marital rape and restrictions to women's rights refuting to their Islamic texts.⁵⁴

d) Political tension between India and Pakistan

Some scholars also believe that political struggle between India and Pakistan has contributed largely to the failure of development of South Asia. A considerable reason behind the struggle could be that Pakistan was once a part of India and the process of formation of Pakistan involved great conflict thereby affecting the relationship between the two nations. Thus, it has always been difficult for other SAARC member states to bring these nations together in any regional initiatives. Their lack of trust and hostility against each other has hindered the other South Asian states from adopting new regional approaches and strategies to development.

5. Conclusion and Way Forward

Although South Asian nations have been initiating at the national level to improve the situation of human rights within their territory, the development of human rights in South Asia, as a whole, has not achieved the desired height because of multiple factors such as the lack of regional spirit among the member nations, cultural relativism,

2011, pp. 35-75.

⁵² Human Rights Watch, 'World Report 2021: India Events of 2020', available at <https://www.hrw.org/world-report/2021/country-chapters/india#> accessed on 12 February 2020.

⁵³ iProbono (n47).

⁵⁴ Ibid.

political turmoil between two biggest nations of the region i.e. India and Pakistan, pluralism in terms of language, religion and ethnicity and highly individualist attitude of each member state.

An underlying failure of South Asia in terms of human rights development is its inability to establish a regional human rights charter or mechanism. This makes South Asia the only region out of other regions of the world without a regional human rights instrument. And, in order to resolve this, it is preliminarily necessary for the member states to develop regional unity amongst themselves irrespective of diversities in respect to their history, culture, religion or economic prosperity. This will motivate each state to head towards the same direction on common grounds. Secondly, states on an individual level are required to strengthen their enforcement mechanisms in order to execute the formulated legal instruments protecting human rights effectively. Thirdly, values of religious tolerance and principle of universality in terms of human rights are to be upheld by each state for improving the existing situation of human rights in South Asia.

Nonetheless, there have been some remarkable changes in the areas of human rights in South Asia in the past few years such as recognition of “third gender”, criminalization of marital rape, growth of national human rights institutions in almost all nations and establishment of few conventions and declarations addressing key human rights issues.