



Book Review

Human Rights Protection in South Asia - A New Road Ahead

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Shveta Dhaliwal, *Human Rights Mechanism in South Asia*, Routledge, Oxon, 2017. ISBN 978-1-138-21864-2]

It is an issue which does not come up for discussion in regular human rights forums, but it is indeed an inconsistent situation that Asia and Australia remain the last two continents¹ that do not have a Continental Human Rights court. The mystery deepens further, when we consider that Asia hosts sixty percent of the world population, is the largest among all the continents, and is home to major democracies including India, Japan, South Korea and Indonesia. It has thus come as a welcome endeavour that an author has chosen to focus on Human Rights protection mechanisms in the Asian continent in general and South Asia in particular.

The book under discussion, which was published early this year (2017), presents a rare insight into the hurdles that have prevented the establishment of a continental Human Rights court in Asia. The author also rues over the fact that even with the existence of a number of regional organisations like Association of South East Asian Nations (ASEAN) and South Asian Association for Regional Cooperation (SAARC), a single institution for dealing with human rights questions emanating from the member states, has remained a distant dream.

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¹ Antarctica is not considered here due to negligible human settlement and specialised nature of the territory.

The foreword of the book written by Judge Roberto F. Caldas, President, Inter-American Court of Human Rights, the second oldest continental human rights court, is a strong reminder of the challenges which humanity faces today. Judge Caldas remarked that “supranational mechanisms are both welcome and necessary to face the increasing sophistication of human rights violations in every region.”²In doing so, he also set the tone for the coming chapters of the book that discusses these mechanisms in minute detail.

The author has divided the book into seven distinct chapters that may also be read as individual units by anyone who is short on time or is interested only on that individual topic. This is a particularly important editorial decision since the subjects, which have been covered through the chapters are interconnected, but in many instances may well be stand-alone topics for detailed research.

The author commences the book with a chapter, which from its title ‘Journey of Human Rights’³seems like an historical account of the subject of human rights, but in reality covers much more. The chapter covers thoughts from ancient Indian religions, Greek and Roman scholars and then moves on to the developments after the two world wars. The author then proceeds to examine the functioning of the United Nations Human Rights treaty based monitoring organisations and covers the different communication mechanisms. These parts can also be useful for any student who needs a brief overview of the UN human rights protection system.

The second and the third chapters are dedicated to four human rights protection mechanisms, which consist of the three continental systems of Europe, the Americas and Africa along with the developing Arab human rights mechanism. The author provides a structured analysis of each of the four mechanisms covering the treaties governing their formation, functioning and evolution. The author then compares the rights protected by each of the mechanisms and then compares their functioning with the

² ROBERTO F. CALDAS, *Foreword*, in HUMAN RIGHTS MECHANISM IN SOUTH ASIA^{viii} (SHVETA DHALIWAL¹ ed. 2017).

³ SHVETA DHALIWAL, HUMAN RIGHTS MECHANISM IN SOUTH ASIA 1 (2017).

UN human rights protection mechanisms. The book makes a clear effort to create a distinction between the Charter based Human Rights system and the Convention based human rights systems in the UN and in the inter-American system. Additionally, the author has tried to highlight the role of organisations beyond the courts such as the Organisation for Society and Co-operation in Europe (OSCE) and the European Union (EU) in the protection of human rights. The author in a very welcome move also focuses on the new, but encouraging development seen in Africa, where the new African Court on Human and Peoples' Rights has started its operation. The author opines that the Court, which came into existence after decades of deliberations, has a crucial role to play in protection of human rights, in the fragile war torn continent.

It is post reading a hundred pages of the book, that we move into Asia and another thirty pages and one more chapter, before we move into the focus area of South Asia as mentioned in the title of the book. The additional pages and chapters however do not disappoint and the author has made a sincere effort to present a detailed picture of the various regional organisations, which have formed, within the continent. The author has gone the extra mile to make the section relevant for both legal scholars and political scientists, by ensuring that she covers the background, history and functioning of the organisations as well as the treaties and the provisions that govern their role and functions. The author has covered the important meetings which have shaped what she calls 'South Asian regionalism'⁴ in detail up to late 2016, which may be of interest to legal historians and researchers in the future.

In line with the expectation raised from the title of the book, the author hits the home run as she reaches the final three chapters of the book that focus solely on human rights in South Asia. She commences the fifth chapter with a detailed review of the geopolitical features of the region and introduces little discussed concepts of 'geo-psychology'⁵ and 'South Asian cold war.'⁶ Contrary to the previous chapters, which looked a little hazy in

⁴ SHVETA DHALIWAL, HUMAN RIGHTS MECHANISM IN SOUTH ASIA 117 (2017).

⁵ *Id.* at 129.

⁶ *Id.* at 132.

terms of detail, the author seems to be in familiar territory as she moves swiftly discussing the human rights problems within the South Asian region and important events in the recent past that have shaped government policies. Human rights concerns and steps taken by the governments in SAARC come under special scrutiny, in addition to the detailed analysis of the contents of the Conventions and declarations adopted on human rights issues in the SAARC summits. The author has also not limited herself to Governments and their decisions alone, but has covered the role of important non-governmental organisations working in the region.

The final two chapters of the book will be of special interest for policy makers, legislators, researchers and legal drafters as she has sought to analyse the ideas that can be derived from the functioning of the other continental human rights protection mechanisms. The author in a strong deviation from her usual approach of considering individual issues in an isolated manner in the rest of the book, has preferred to use a comparative approach in the penultimate chapter. The author uses this approach to derive lessons for improvement for the SAARC charter from the UN Charter, the Charter of the Organization of American States (OAS Charter), the Constitutive Act of the African Union and the Statute of Council of Europe.

Through this analysis of the documents and based on experience from other global efforts, the author proposes what she calls "roadmap for the establishment of a South Asian Human Rights mechanism."⁷The author uses the opportunity to propose a plethora of new documents and organisations including a South Asian Commission of Human Rights, a South Asian Parliament, a South Asian Human Rights Court and a South Asian Convention on Human Rights. It comes as no surprise that since India as the regional superpower would have a key role in the eventual fulfilment of any of the proposals, the author has chosen to conclude the book with an enumeration of the proposed benefits of South Asian Human rights protection mechanism for India.

The book is a laudable effort to push forward much-needed harmonisation in human rights standards in a region, which has

⁷ *Id.* at 192.

been plagued with human rights issues. It presents a fresh perspective on the subject and fills a long existing gap in literature in the subject, considering that most of the existing literature on the subject of a new human rights mechanism in Asia has mainly focussed on East Asia (Hidetoshi Hashimoto, *The Prospects for a Regional Human Rights Mechanism in East Asia*, Routledge, 2015) and South East Asia (HaoDuyPhan, *A Selective Approach to Establishing a Human Rights Mechanism in Southeast Asia*, Martinus Nijhoff, 2012 / Vitit Muntarbhorn, *Unity in Connectivity?: Evolving Human Rights Mechanisms in the ASEAN Region*, Martinus Nijhoff, 2013). A focussed approach to propose changes in South Asia, which as a region hosts a humongous chunk of world population and has a large population in need of human rights protection, is indeed most welcome.

Notwithstanding the broad coverage of issues, the book is not a comprehensive treatise on the subject and readers who desire detailed knowledge would have to supplement their knowledge with other sources. The author has also provided very limited information on her vision for the new proposed organisations and their functioning. This might be a result of editorial requirements to keep the book concise, but more insight into her proposals can be a welcome addition in the future editions of the book. The proposals are a work in progress and open new areas for further research by budding researchers. The proof readers of the book for future editions need to be more careful to remove errors in citation, scattered around the book.

In a nutshell, *Human Rights Mechanism in South Asia* deserves to be on the to read list of policy makers, human rights lawyers and any person who is interested in human rights issues. With easily downloadable Portable Document Format (PDF) versions and e-books, the publishers have taken the right steps to reach out to readers across the globe. Not to be overlooked, for law students, it can serve as a last minute read for a brief overview of human rights protection mechanisms across the globe and is a recommended addition for any college or University library.