

## **THE SOCIAL CHARTERS OF COUNCIL OF EUROPE AND SAARC: A COMPARATIVE ANALYSIS**

**By: Shveta Dhaliwal\***

Regionalism has always remained an important area of study in International Relations. The recent developments like globalization have further given impetus to regionalism. On a closer look, a lot of inter-relationship can be witnessed between these developments which apparently look quite different. This paper is an attempt to study developments in human rights at regional and sub-regional levels and a comparative analysis thereof. As a matter of fact regions have been quite effective to enforce the otherwise weak human rights at international level. This paper brings forth such efforts taken by Europe, under the Council of Europe (CoE), and by South Asia, under the South Asian Association for Regional Cooperation (SAARC), by way of adopting Social Charters. The higher purpose of this comparative study of European and South Asian Social Charters is to look into the scope and prospects of establishing a SAARC human rights mechanism while taking inspiration from the European experience. Perhaps this is an area that has not been part of serious study so far.

**Key words:** Human Rights, Regionalism, Europe, South Asia, Social Charter

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\* The author is Assistant Professor in the Department of Political Science and Co-ordinator of School of Social Sciences and Inter-disciplinary Studies (SSSIS) at Rajiv Gandhi National Law University, Patiala, Punjab, India. She is also Director and President for South Asia, Consortium for Teaching, Learning and Research (CTRLD), USA. She has availed an International scholarship from the International Institute of Human Rights, Strasbourg, France. She also did an Intensive Training Course on Human Rights Teaching and Research in Universities from the same Institute.

## **INTRODUCTION**

The universal human rights are divided in generations. The Civil and Political Rights (CPRs) are the first generation; the Economic, Social and Cultural Rights (ESCRs) are considered as the second generation human rights and the Solidarity rights are considered as the third generation. In this paper I would be focusing on the first two generations of human rights as the regions identify with the either of the two for reasons peculiar to their regional dynamics and political backgrounds. Secondly, the first two generations represent the most basic kinds of human rights.

The paper has been planned as an inverted pyramid since it moves from the more general to the more particular aspects of this paper, and is divided into five parts. Part one gives introduction to the issues highlighted in this paper, part two traces the international perspective of human rights development, part three explores the regional implementations of the ESCRs, part four places the two regional Social Charters face to face and analyses their comparative developments. Part five summarises the whole analysis with conclusions and suggestions.

## **II**

### **INTERNATIONAL PERSPECTIVE OF HUMAN RIGHTS DEVELOPMENT**

Since the paper is based on the role of regions in the promotion and protection of human rights it is must to refer to the international human rights norms and monitoring systems, from where these regional systems draw their support and mandate. The foundations of international human rights regime was laid down by the International Bill of Human Rights, comprised of The Universal Declaration of Human Rights (UDHR), 1948, The International Covenant on Civil and Political Rights (ICCPR), 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, and the Protocols to the Covenants (Two of the ICCPR in 1966 and 1989 and one to the ICESCR in 2008). The UDHR being non-binding in nature, it is the two Covenants and the Conventions, which are treaty based, that are responsible for the implementation of human rights. The Protocols further add to the strength of the Covenants. However, it is not as simple as that. The nature of the CPRs, also known as the first generation

human rights, is considered to be different from the ESCRs, also known as the second generation human rights (South Asian Human Rights documentation Centre: 2006). This difference in their nature greatly effects the implementation of these rights. A brief overview of the difference between these generations of human rights has been discussed I the paragraphs ahead.

### **Civil and Political Rights (CPRs) v. Economic, Social and Cultural Rights (ESCRs)**

There are some basic differences in the nature and kind of the CPRs and the ESCRs which are reflected in the International Covenants too. Firstly, the CPRs impose negative obligations on the State (for example people seek right to criticize the government, right to vote and participate in the governance so that the State can be held responsible and its acts re contained by popular checks and 'stops' the State from exceeding their limits) whereas the ESCRs impose positive obligations (for example, the people seek help from the State to provide safe drinking water, shelter, employment etc. and urges the State to 'do' these things). Secondly, CPRs are individualistic in nature, whereas ESCRs can be claimed by groups or sections of the society (for example women, children, workers etc.

Thirdly, the CPRs are evaluated on the present situation within a State (as these rights are to be provided to the people in all forms of governance models) whereas the ESCRs are futuristic in approach (as the States 'ought to' implement these rights according to their sources which it 'will' generate by various projects). Fourthly, the CPRs are preferred by the western world and the ESCRs are preferred by the Non-western regions. Perhaps it is primarily because the western countries are liberal in approach and the non-westerns are represented by 'Asian values' that is the preference in these regions is towards positive obligations of the States towards the people and less on individual demands. Fifthly, the CPRs are understood to be more defined as there is a provision for some derogable clauses for these rights in the ICCPR itself which speaks for the conditions under which these rights can be suspended and which of these can never be suspended by the State. Article 4 of the ICCPR deals with the derogation clauses of the ICCPR. It provides for no derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18.

(McGodrick: 2006), whereas there is no such clause in ICESCR hence there are ambiguities in their clarity.

It is due to these differences in nature of these two categories of rights that is reflected in the monitoring system for these human rights. The machinery for the implementation of the rights enumerated in the ICESCR is quite different from the ICCPR. It is because the implementation of economic and social rights is a national issue which requires administrative machinery at national levels to protect and enhance these rights. The States parties to the Covenant do not undertake to ensure the rights set forth in it immediately, like the parties to the Covenant on CPRs (Article 2(1) of ICCPR and Article 2(1) of the ICESCR). As mentioned above these rights are futuristic in nature, the States simply commit themselves to take steps, individually and through international assistance to the maximum extent of their available resources. For the ICCPR the monitoring is done by the Human Rights Committee. The Committee carries out the implementation of human rights stipulated in the covenant in four different ways and these are: The Reporting Procedure, Inter-State Communication System, Conciliation Procedure, Individual's Communications System.

Whereas, the ICESCR is the only United Nations human rights treaty which did not establish a Committee to oversee and monitor the implementation of the Covenant ([http://www.who.int/hhr/Economic\\_social\\_cultural.pdf](http://www.who.int/hhr/Economic_social_cultural.pdf)). The Committee on Economic, Social and Cultural Rights was instead established by United Nations Economic and Social Council (ECOSOC Resolution 1985/17 of 28 May 1985) to carry out the monitoring functions that had initially been assigned to ECOSOC. The Committee adopts only one method, that is, State Reporting. It examines reports transmitted by each State party and issues responses to these in the form of concluding observations where the Committee outlines its concerns and makes suggestions and recommendations ([www.unhcr.ch/tbs/doc.Nsf](http://www.unhcr.ch/tbs/doc.Nsf)). In December 2008 the Covenant has been added to by an Optional Protocol, which has introduced the Individual Communication Procedure to this Covenant. The Optional Protocol will not come into force until 10 States have ratified it. It has been opened for signature in Geneva, March 2009 during the 10th session of the

Human Rights Council ([http:// humanrightsnexus. org/ index. php? option= com\\_ content&task =view&id =49&I temid =67](http://humanrightsnexus.org/index.php?option=com_content&task=view&id=49&Itemid=67))

The above analysis shows that the implementation procedure under the two Covenants is not very effective. In the ICCPR, the Inter-State communications system as provided under Article 41 has not been utilized by the States who have made the Declarations. The Conciliation Procedure is also of no use because the system is utilized only in the Inter-State Communication System. As far as the Covenant on ESCRs is concerned, there is no procedure for its implementation other than the State Reporting System which is a weak method to protect the rights provided in the Covenant as the States are always reluctant to submit reports on the pretext of breach of their Sovereignty.

Diverting a bit from the point being made here, I would like to highlight that in this grim situation the regional human rights mechanisms emerge as a silver lining. These regional arrangements for protection of human rights follow the norms of the international regime however; they are much stronger in case of implementation of human rights. This would be explained ahead in the paper.

### **Convergence of the ICCPR and the ICESCR**

Although these two kinds of rights are different in many respects even then their inter-dependence cannot be ignored. To upkeep the universal status of these rights it was felt necessary to make it clear to the countries that both generations of these rights are interdependent and interrelated (Baehr 1999). Their relationship was recognized by the International Conference on Human Rights which was held in Tehran in 1968. It was declared in the final proclamation that 'since human rights and fundamental freedoms are indivisible, the full realization of CPRs without the enjoyment of ESCRs is impossible (Para 13 of the Proclamation of Tehran). The General Assembly in 1977 reiterated in the General Assembly's Resolution 32/130 which stated 'All human rights and fundamental freedoms are indivisible and inter-dependent and equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and, economic, social and

cultural rights'. The Resolution also stated that 'full realization of CPRs without the enjoyment of economic, social and, cultural rights is impossible. CPRs are the means to the social and economic power of the people. Vienna Conference on Human Rights held in 1993 in Vienna recognized under Para 1 as under:

“... the solemn commitment of all States to fulfill their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.” ([http:// www.unhchr.ch /huridocda /huridoca .nsf/\(symbol\) /a.conf.157.23.en](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en)).

Therefore, it is emphasised that there is and cannot be any debate on the universal nature of human rights and it is mandatory to clarify here that all the regional efforts to enforce human rights is not a break away from this approach rather the regions have strengthened the universal human right movement. Under Para 5, the Declaration stipulated that

“... all human rights are universal, indivisible, inter-dependent and inter-related. The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same expression shall be meaningless in the absence of social and economic rights. It is desirable, therefore, that the States should give equal emphasis to the rights stipulated in both the Covenants in view of their inter-dependence.” ([http:// www.unhchr.ch /huridocda /huridoca .nsf/\(symbol\) /a.conf.157.23.en](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en)).

The interdependence of all kinds of human rights is also relevant for this paper in a different way. In this paper it has been highlighted that the western regions have a preference for the CPRs and the Asian regions have for the ESRs which should not be misunderstood for the Western regions' ignorance for the ESCRs or the Asian regions' indifference for the CPRs as these right go hand in hand and enforcement of one leads to enforcement of the other, for example, right to education, right to social security etc.

## **Regional Priorities towards the Two Basic Kinds of Human Rights (ICCPR and ICESCR)**

No doubt that in essence these rights are inter-related and inter-dependent, however, the dichotomy between the two kinds of human rights has been witnessed at the regional platforms where in some regions there has been seen preference for CPRs (Europe and Inter-American) while in some others there has been preference and focus on economic social and cultural rights (Africa and Asia/ Asian Sub-regions). But fortunately most of these regions have struck a balance between these two (African Charter on Human and Peoples' Rights, 1981 has incorporated both CPRs and the ESCRs in one document) and some in the process of that (Europe, Inter-America<sup>1</sup>) by making efforts to incorporate ESCRs in the monitoring of the CPRs.

### **III REGIONAL IMPLEMENTATIONS OF THE ESCRs**

The importance of regional governance has affected the human rights regime to a great deal from the very beginning. In the discussion on International Covenant on Human Rights, the difference in regional approaches was very visible and which led to the creation of two rather than one Covenant. First, being the International Covenant on CPRs (ICCPR) and the Second, the International Covenant on ESCRs (ICESCR); the first being preferred by the Western Regions and the latter by the Eastern or the Asian Region. Another aspect of importance of the regions, which is highly relevant to mention here is, that almost simultaneously the regions started working on regional implementation of human rights. For Example the America adopted the Declaration on Rights and Duties of Man in 1948, few months prior to the Universal Declaration of Human Rights, UDHR, adopted by the United Nation in December, 1948, and the only human rights document not referring to the UDHR. Also, the first Treaty Based Mechanism for Human Rights was also adopted by a region, when the Council of Europe adopted the European Convention on Human Rights in 1950. Here, I am compelled to repeat the point mentioned earlier that the West preferred CPRs over ESCRs, because the Convention included only the former. (This point is relevant to justify the human rights Initiatives of SAARC, which is taken up later in this paper.) Also in case of the Inter-American Convention on Human Rights, the provisions for the ESCRs were added later by way of a Protocol. In 1961, five years prior to the

ICESCR of the United Nations, the Council of Europe adopted a Social Charter, dedicated to the second generation of human rights i.e. the ESCRs. In case of South Asia there is no human rights treaty for the region, however, like the Europe under the Council of Europe South Asia under the SAARC, has been working towards the realization of ESCRs in the region, since its inception.

### **Europe and South Asia: Some Points of Affinity**

The relations between the Europe and South Asia are multidimensional and historic. Europe has consistently affirmed an interest in strengthening links with South Asia, the former has done this by way of European Union and the latter is represented by SAARC (Jean-Luc Racine: 2003). The ties between Europe and South Asia are not recent in origin. These regions have shared a long history of international relations. According to Kant K. Bhargava, India, Pakistan, Bangladesh, Nepal and Afghanistan were under the region of Indian King Ashoka and he shared strong ties with many European countries. Later South Asia was even more exposed to European administration and politics due to the regions subjugation to British rule (Sahasrabuddhe 2008). Both the regions, however, started growing in Post World War Era. In Europe there was a trend towards cooperation during the Cold War and in South Asia there was a wave of 'Freedom Struggle'. While Europe was initiating unity (Franco - German Treaty was signed in 1963) South Asia was getting divided with the partition of India and Pakistan and later creation of Bangladesh. The Franco - German Peace was emulated by India and Pakistan in 1982 by way of drafting Treaty of Peace, Friendship and Cooperation. In Europe started getting transformed into one community in 1970s and 80's (Creation of EEC) and demand for regional cooperation in South Asia also emerged in 1970's and in 1980's Bangladesh put forward a proposal for a regional organization for the seven countries of South Asia (Bhargava 1998). Here also unique similarity can be observed between these two regions. India was hesitant to join a regional platform as it was the biggest country and anticipated other member countries might 'gang up' against it similar inhibition were of England (Bhargava 1998). England joined EEC in 1973, and India joined SAARC in 1985. SAARC come up in 1985 at Dhaka and seven countries became its member. Europe's interest in Asia and particularly in South Asia started developing 1994; when a European Commission for a new strategy for Asia was set up (Bhargava 1998). In 1996, the



Europe under European Union signed a Memorandum of Understanding in cooperation with SAARC ([http://ec.europa.eu/external\\_relations/saarc/index\\_en.htm](http://ec.europa.eu/external_relations/saarc/index_en.htm)). Europe by way of European Union has been involved with particular countries of South Asia e.g. in Bangladesh, EU offered its committed assistance to the 1997 Chittagong Hill tracts peace process (Jean-Luc Racine 2003) In Sri Lanka also EU facilitated case for agreements between LTTE and the Sri Lankan government. In case of Afghanistan, this newest member of SAARC, EU has been supporting the establishment of representative government ([www.europa.eu.int/comm/external\\_relations/afghanistan/intro/index.htm](http://www.europa.eu.int/comm/external_relations/afghanistan/intro/index.htm)) with India also EU has signed a partnership agreement.

At present Europe is being led by two parallel regional waves one represented by the European Union (EU) which symbolizes supra-nationalism as it obliges its members to promote cooperation beyond political boundaries. This feature of the EU has been followed by the SAARC as well by initiating the South Asian Free Trade Area (SAFTA) in 1993. The second regional organization representing Europe is the Council of Europe (CoE) and this works with a balance between supra-nationality and State sovereignty as it includes the governments in the monitoring of its treaties and conventions and also offers reservations. SAARC has recently started following the footsteps of CoE by way of adopting a Social Charter in 2004. The two Social Charters show the meeting point of these otherwise very different regions and on the other hand these Charters also signify the universal need for enforcement of Economic and Social Rights. To understand this convergence of these regions we have to begin with the difference between these regions.

Before we begin to compare the similar initiatives of Social Charters, these regions we must take into account their differences. As these differences would be justifications for the peculiar ways adopted for the implementation of these Charters.

## **Europe and South Asia: Some Points of Differences**

European regionalism has grown continuously at a fast pace whereas in South Asia the growth has been slow (Amin 2008). The reason for this, which is also another point of difference between these regions, is that the Europe has created a balance between its supranational regionalism and State sovereignty, represented by the European Union (EU) and Council of Europe (CoE), respectively. However in South Asia the States are suffering from inflated sovereignty complex and understated status of regional cooperation (Dhaliwal 2009). These countries also suffer from mutual distrust and feel threatened by the 'big brotherly' attitude of India, another stage which Europe has passed. Another big problem in case of South Asia is the variety of political regimes. In this small sub-region one can find monarchies, democracies, military regimes etc. in de-facto and de-jure forms. These regimes further face internal and external threats. Internal due to weak social system, economic problems etc. and externally due to mutual distrust of the members, territorial claims etc. This too Europe has passed successfully by opening their borders and adopting common currency. Also South Asia has huge population and less resourced governments, both these factors pose a challenge to the status of human rights. Yet this region has no human rights mechanism. In case of Europe, the CoE has laid down a sound human rights mechanism which is treaty based to keep the States restricted, people empowered and the region prosperous. Another big difference in these two regions is that the European institutions are well developed, for example the European Court of Human Rights, the European Court of Justice, the European Parliament etc. whereas in South Asia such institutions are nowhere even under serious consideration (Naqvi 2006). Despite all the mistrust and doubt amongst the SAARC members, it works on the principle of consensus whereas Europe does not follow this criterion (Bhargwa 1998) Europe considered the Communist world to be a common problem, South Asian countries have no common threat from outside the region, hence these countries lack motivation to work together. This keeps the States from uniting for the case of regional strength. Last but not the least South Asia has no supra national organization to impose some decisions and to keep States complaint which was established in Europe way back in 1991 by adopting the significant Maastricht Treaty.

## **The Social Charters: The Meeting Point of Europe and South Asia?**

The Council of Europe was founded in 1949 and in 1950 it came up with the Treaty Based European Convention on Human Rights. Similarly in case of SAARC, formed in 1985, the human rights issues were focused upon by this organization in its very second Summit in 1986. Both the charters focus on the second generation human rights that are the economic and social rights. The details of these Charters are discussed ahead.

The European Social Charter: Origin and Expansion:

The European Social Charter is the third of a series of European treaties aiming to protect Human Rights after the Statute of Council of Europe, signed in London on 5 May 1949 and the Convention for the Protection of Human Rights and fundamental freedoms (the European Convention on Human Rights) signed in Rome on 4 November 1950 (European Social Charter Short Guide, Council of Europe Publishing, Strasbourg, 2000). The CoE signed a Treaty on Social Rights in 1961 in order to enlarge the scope of Human Rights Mechanism of Europe (Murdoch 2009). This European Mechanism for Human rights was functional since 1950 when the European Convention on Human Rights was signed by the Council of Europe. In consequence of this treaty on Social Rights the Council of Europe guaranteed some Social and Economic Human Rights to its people. These rights were not included in the European Convention on Human Rights, 1950 as the nature of Rights in this Convention was Civil and Political. It took more than decade for Europe to incorporate Economic and Social Rights in its Human Rights Mechanism, which re-emphasizes the preference of the West towards the CPRs as they are more liberal in approach. The European Social Charter has been supplemented thrice by way of Protocols adopted in 1988, 1991 and 1995. The Charter has also been revised in 1996 (Alston 2005). The following information on the growth and development within the European Social Charter is primarily based on the facts provided by the CoE.

The Additional Protocol of 1988 added the right for workers to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the ground of sex, the right for workers to be informed and consulted within the undertaking, the right for workers

to take part in the determination and improvement of working conditions and the working environment in the undertaking, the right for elderly persons to social protection. The Amending Protocol of 1991 clarifies the respective functions of two principal organs of control the European Committee of Social Rights and the Governmental Committee and reinforced the participation of social partners and non-governmental organizations (Opened for signature by the member States of the Council of Europe signatories to the Charter, in Turin, on 21 October 1991). The Additional Protocol providing a system of collective complaints of 1995 entitles social partners and Non-Governmental Organisations to lodge collective complaints of violations of the Charter in States which have ratified it. The complaint is examined by the European Committee of Social Rights which declares it admissible if the formal requirements have been met. The Revised European Social Charter of 1996 includes all the rights mentioned in the protocols in one document and also provides for some new rights like right to protection against poverty and social exclusion; right to housing; right to protection in cases of termination of employment; right to protection against sexual harassment in the workplace and other forms of harassment; rights of workers with family responsibilities to equal opportunities and equal treatment; rights of workers' representatives in undertakings and also made some further amendments like reinforcement of principle of non-discrimination; improvement of gender equality in all fields covered by the treaty; better protection of maternity and social protection of mothers; better social, legal and economic protection of employed children; better protection of handicapped people. Enforcement of the new Charter is submitted to the same system of control as the Charter of 1961, developed by the Amending Protocol of 1991 and by the Additional Protocol of 1995 providing a system of collective complaints (<http://conventions.coe.int/Treaty/en/Summaries/Html/128.htm>). In its present, form the Charter has six parts, the First part provides for Social and Economic Rights Guaranteed by this Charter. This Charter has 19 Articles guaranteeing economic and social rights and has been ratified by 41 States. The States were free to keep some reservation in order to get this Charter signed and ratified by most of the Countries. The original European Social Charter made provisions for reservations for the States party in case they want do not approve of any rights or provision mentioned under it. Under this Charter the parties are

expected to submit National Reports which can of two types Biennial or Occasional (Harris 2000). The Biennial Reports are submitted by the parties on the provisions of the Charter which they have accepted. However, the Occasional Reports are submitted by the State Parties regarding the unaccepted Articles of the Charter. The individuals have no complaint mechanism under this Charter. However, a collective complaint mechanism was added to the Charter by way of Protocol 1991 as mentioned above. The reports of the states are submitted to the European Committee of Social Rights which considers the legal aspects of the reports. The monitoring of the Social Charter, at its second tier involves the governments of the states party to the Charter by way of an office called the Governmental Committee. This Committee is Constituted of Bureaucrats of the states party to the Charter and the principle of 'Peer Pressure' works at this level since the members point out the drawbacks of the States and discusses the possible prospects of improvement. The members may also ask questions to the other members who are representing their states. This Committee prepares the recommendation to be submitted to the Committee of Ministers. This office is an important feature of European Regionalism as it gives due respect to the Sovereign States, representatives to participate in the proceedings of the monitoring of the Social Charter.

#### South Asian Social Charter: Historical Background and Present Status

In case of the South Asia the idea of a Social Charter had been simmering since 1986 and could surface in 2004. The Heads of State or Governments of the seven South Asian founder member countries met in Sri Lanka in Dhaka on 7-8 December 1985 and signed a Charter of the South Asian Association for Regional Cooperation (Dhaliwal 2009). The growth and development of the SAARC's Charter and hints towards the South Asian Social Charter are discussed ahead:

At the second SAARC Summit held in Bangalore on 16-17 November, 1986 it was urged that the United Nations Convention on the Rights of the Child should be adopted. It was repeated in the third Summit held in Kathmandu on 2-3 November 1987. At the fourth Summit held in Islamabad on 29-31 December 1988 the idea of a 'SAARC - 2000: A Basic Needs Perspective' was discussed which again was a hint towards social needs of the people of South Asia. At the

fifth Summit held in Mali on 21-23 November 1990, it was expressed collectively to observe 1990 as the 'SAARC Year of the Girl Child' and the decade '1991-2000 AD' as the 'SAARC Decade of the Girl Child' another social aspect of human rights. At the sixth Summit held in Colombo on 21 December 1991, 'Poverty Alleviation' was added as an important concern along with the expressed need for protection of the environment. It was also agreed that 1991 should be 'Year of Shelter' and 'Shelter for All by 2000'. In the seventh Summit held in Dhaka on 10-11 April 1993, a consensus on 'Eradication of Poverty' was announced. Also, a 'Plan of Action for the Disabled Persons' was adopted and 'People-to-people Contact' was added to SAARC concerns. Human development was added to the concerns, 'A policy of human development, including the enhancement of the social role and status of poor women, the provision of universal primary education, skill development, primary health care, shelter for the poor and protection of children'. The eighth Summit held in New Delhi on 2-4 May 1995 marked the first decade of SAARC. All the items related to human security mentioned in previous declarations were mentioned and some were elaborated. The ninth Summit in Maldives in Male held on 12-14 May 1997 decided that:

A 'Group of Eminent People (GEP) be constituted, with distinguished backgrounds in activities pertaining to regional cooperation, comprising of one representative from each Member State, with the discretion of each Member State to appoint an additional representative'. GEP was to evaluate the performance of SAARC and develop a 'long-range vision and formulate a perspective plan of action including a SAARC Agenda for 2000 and beyond which will spell out the target that can and must be achieved by the year 2000. The Group may report to the Heads of State or Government at the 10<sup>th</sup> SAARC Summit.

For the first time the idea of a Social Charter was proposed by the GEP, and was put forward at the tenth Summit held in Sri Lanka in Colombo from July 29-31, 1998. In the Eleventh summit held in Kathmandu, Nepal from 4-6 January 2002 adopted a declaration and favoured the 'Report of the Group of Eminent Persons' completely. The twelfth Summit held in Pakistan in Islamabad in 4-6 January 2004 reiterated past commitments to human security. And ultimately in 2004 the Social Charter was signed at Islamabad. Since then the charter has been given

emphasis on every occasion of SAARC. At the thirteenth Summit in Bangladesh in Dhaka, on 12 - 13 November 2005, it was acknowledged that the realization of the Social Charter was 'crucial to enable SAARC to meet the hopes and aspirations of the common peoples of South Asia and visibly improve the quality of their lives'. At the fourteenth Summit held in India in Delhi in 3-4 April 2007 took up briefly the items on human security and reiterated the need to realize the Social Charter. The fifteenth Summit held in Colombo in 2-3 August 2008 noted with satisfaction the signing of the SAARC Development Fund. With regard to legal obligations elucidated in Article 1, dealing with general provisions the Charter states, 'State Parties agree that the obligations under the Social Charter shall be respected, protected and fulfilled without reservation and that the enforcement thereof at the national level shall be continuously reviewed through agreed regional arrangements and mechanisms. 'The implementation of the Social Charter shall be facilitated by a National Coordination Committee or any appropriate national mechanism as may be decided by each country'. No SAARC authority or institution is assigned the duty to oversee the implementation. It remains an obligation of the state parties. There has been no amendment or addition to the South Asian Social Charter till date.

#### **IV COMPARISON OF THE SOCIAL CHARTERS: AN ANALYSIS OF THE COMPARATIVE CHART**

A Comparative Chart entitled: Comparison of the Monitoring of Socio- Economic Rights by the UN, CoE and SAARC has been prepared to support the comparative analysis of the two Social Charters and their further relation to the International Covenant. The Chart presents the comparison between the International Covenant for ESCRs, the European and the South Asian Social Charters. Through this Comparative Chart a link between the global, regional and sub-regional trends related to human rights have been highlighted. Also it is an attempt to support the argument that the International human rights regime actually involves the regional and sub-regional regimes. *These are the generations of the human rights monitoring.*

**Comparative Chart: Comparison of the Monitoring of Socio- Economic Rights by the UN, CoE and SAARC:**

*Comparing the International, Regional and Sub-regional Human Rights Trends*

1.	Organization	United Nations(UN)	Council of Europe (CoE)	South Asian Association for Regional Cooperation (SAARC)
2.	Adoption	1966	1961	2004
3.	Enforcement	1976	1965	2004
4.	Provision for Reservations	Yes	Yes	No
5.	Signatories	69	47	8
6.	Ratifications	160	41	8
7.	Protocols/Amendments	One	Three	None
8.	Rights Guaranteed	Self-determination, equal right of men and women, the right to work, form trade unions, right to social security, right to an adequate standard of living, right to the enjoyment of the highest attainable standard of physical and mental health right, right to education, right to take part in cultural life and to enjoy the benefits of scientific progress and its applications	Housing, Health Education, Employment, Legal and social protection	Poverty Alleviation Health Education, Human Resource Development and Youth Mobilization Promotion of the status of women Promotion of the Rights and Well-being of the Child Population Stabilisation Drug de-addiction, Rehabilitation and Reintegration
9.	Articles Providing for Rights	1-15	1-19	3-9



10.	<b>Supervisory Body/Bodies</b>	Economic and Social Council (ECOSOC)	European Committee of Social Rights (ECSR) and the Governmental Committee (GC)	National Coordination Committee (NCC)
11.	<b>International/Regional Bodies</b>	Yes (Less Effective)	Yes	No
12.	<b>Involvement of the States in Monitoring</b>	No	Yes	Yes
13.	<b>Provision for State Reporting</b>	Yes	Yes	No
14.	<b>Individual Complaints</b>	Yes (Protocol of December 2008)	No	No
15.	<b>Collective Complaints</b>	No	Yes, accepted by 14 states	No
16.	<b>Provision for Oral Hearings</b>	No	Yes	No
17.	<b>Role of the Secretariat</b>	UNHCHR, Partial Support	Full Time Support	No Role of the Secretariat
18.	<b>Role of NGOs</b>	Effective and Informal	Effective and Formal	Effective and Informal
19.	<b>Drawbacks</b>	Weak State Reporting Non Binding	No Individual Complaints	No Regional Monitoring Body No Human Rights Treaty
20.	<b>Recent Trends</b>	Individual Communication	State Warnings	No
21.	<b>Complementary Charter for Civil and Political Rights</b>	Yes (ICCPR)	Yes (ECHR)	No

The point wise analysis of the Chart is as follows:

At International level the United Nations (UN) adopted the International Covenant on ESCRs (ICESCR) in 1966, which came into force in 1976. This Covenant was drafted to protect and promote the second generation human rights which dealt with daily needs of the people and promoted positive obligations of the State that the State must take actions to uplift these rights (right to work, right against poverty, right to education etc.) of its people. At regional level the Council of Europe (COE) followed the UN and adopted the European Social Charter (ESC) in 1961 which was enforced in 1965 (Greer 2006). At sub regional level, the South Asian Association for Regional Cooperation (SAARC) also adopted a South Asian Social Charter (SASC) in 2004 and enforced it in the same year.

There are sixty nine signatures and one hundred and sixty ratifications of the ICESCR, which means in the municipal laws of these one hundred and sixty States, the provisions of this Covenant have been adopted. The ESC has forty seven signatures and forty one ratifications ([://www.coe.int/t/dghl/monitoring/socialcharter/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/default_en.asp)) and in case of SASC, all the eight members have enforced this charter. There is one observation to be made here, that the willingness of the States to domestically apply international, regional and sub regional commitments increases respectively. As we see that the number of the States that have not ratified the ICESCR, the ESR and the SASC decreases from the international to sub-regional level. The ICESCR has been recently added to by an Optional Protocol in December 2008. The ESC has had three Protocols and SASC has not been added to or amended till 2009.

The nature of the rights provided in this Covenant and the Social Charters is economic and social and hence are similar. The ICESCR's text provides for these rights from article one to fifteen in the ESC from one to nineteen and in SASC from three to nine. The supervisory bodies for the implementation of the rights provided for ICESCR is the Economic and Social Council (ECOSOC). For the monitoring of ESC there are two supervisory bodies: European Committee of Social Rights (ECSR) and the Governmental Committee (GC). For SASC there is National Coordination Committee (NCC) in each member country of SAARC.

The ICESCR is monitored by an international body that is the ECOSOC, which is not very effective since its decisions are not binding on the States party to the Covenant whereas in case of the ESC there are two monitoring bodies which are very effective since the States compliance is followed up by the Committee of Ministers of the CoE. In case of the SASC there is no regional body for the monitoring of the charter; only the NCCs. There is no follow up mechanism for the SASC. The ECOSOC does not involve States in the 'monitoring' of the rights and other provisions of the ICESCR; it only receives the Reports from the States on the status of these of these rights in their societies. However, the GC for the ESC comprises of representatives of the States, who take part in the decisions regarding the Charter's compliance.

Except for SASC, the other two monitoring systems of the ICESCR and the ESC have adopted State Reporting System.

These monitoring systems have some unique features to them. For example, only the ICESCR has the provision for the Individual Complaint Mechanism, added by the recent Protocol of December 2008. Only the ESC has provided for Collective Complaint Mechanism and also it is the sole example of Oral Hearings for the monitoring of the charter and only the SASC (has no reservation clause and no State Reporting system as mentioned earlier also) and is looked after by the States only through the NCC's.

For the ICESCR, the UNHCHR plays the role of the secretariat, which is a part time role. The Council of Europe's secretariat gives full support to the monitoring of the ESC (Harris, 2000). And in case of SASC there is no support of the SAARC Secretariat.

The Non-Governmental Organisations play an important role in all three systems, however, only the ESC given them a formal status by way of the provision for Collective Complaints. Weaknesses in the State Reporting system and non binding nature of the decisions of the ECOSOC are the drawbacks of ICESCR. In case of ESC the absence of Individual Complaint System can be considered a weakness. For SASC non-existence of any higher / regional body to monitor the charter, absence of a general human rights treaty is a drawback; for which this region must learn its lessons from the experiences of Europe (Dhaliwal 2009).

These documents, being compared here are still growing. The inclusion of the Individual Complaint Mechanism is the latest growth of the ICESCR. In case of ESC, the COE has adopted 'State Warnings' for non complaint States. However, unfortunately there is not growth in case of SASC.

In the end it is noteworthy that ICESCR is supported by a similar International Covenant on Civil and Political Rights (ICCPR), the ESC has the support of the European Convention on Human Rights (ECHR). Whereas, for SASC there is no parallel or similar system for the protection of civil and political rights in the region; for which the South Asian region needs to copy European fashion, probably in a reverse order. By which it is meant that the economic and social rights must be given priority over the civil and political rights, as per the region's requirement.

## **V CONCLUSION AND SUGGESTIONS**

Keeping in mind the peacefulness of the Europe it is advisable for South Asia to pave its way to a similar situation. Proper implementation of the South Asian Social Charter can be of help in this matter. And to improve the enforcement of the Social Charter SAARC may take some lessons from the European Social charter Mechanism. Secondly, following the clause of seeking international cooperation for the upliftment of economic and social rights in the Vienna Declaration's Program of Action which says:

“ . . . States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development.”

While doing so SAARC and CoE can look ahead to several new fields of cooperation and development and evolve as more efficient regional organizations (Amin 2008). Moreover, it is time for the world to realize the human rights culture of South Asia (Dhaliwal 2008) as compared to other sub-Asian regions, where the political regimes are dictatorial, human rights violations by the State and its machinery are rampant and uncontrolled. Whereas South Asia has not only been the birth place of many philosophies of human rights but has also proven to be hub of effective national human rights institutions and activists (Dixit 2009). The Social Charter is the region's first regional human rights initiative, which by no means is a smaller achievement than any other region. Although, South Asia must keep working on this convention, so that it can lead to general human rights mechanism of South Asia (Dhaliwal 2009). In order to move towards the general human rights treaty South Asia under the flag of SAARC can initiate a collaborative research with CoE. This should be done not only for human rights but also for the economic plans of SAARC which could not be implemented till date although they are similar to the European plans (like SAFTA). SAARC can also learn from the Institutional growth of Europe. For example there is already a debate on having a South Asian Parliament and

strengthening the SAARC Secretariat on the lines of Europe. Contemporary International activities draw heavily from the regional cooperation. And it is time for the regions to cooperate with each other. The sooner South Asia learns this lesson the better it would be for its future. Last but not the least South Asia and Europe by way of cooperation between the Council of Europe and SAARC should promote more and more academic research for regional growth especially in South Asia there is need to promote regional studies so that regional outlook of the academia helps a regional outlook of the young population of this region and brings the efforts being undertaken to the knowledge of the rest of the world.

END NOTE:

1. [The paper was presented at Catholic University of Salta, Argentina and has been revised by the author.](#)
2. [The European Social Charter was prepared in 1961, five years before the ICESCR, therefore the Universal Declaration on Human Rights was the inspiration for this Social charter in the initial stages.](#)
3. [The Additional Protocol of San Salvador 1988. For further details see: \[http:// www. oas. org/ juridico/ English/ Treaties/ a-52.html\]\(http://www.oas.org/juridico/English/Treaties/a-52.html\). Visited on 22 March 2015.](#)

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