

The Need for an Asian Convention on Human Rights Inspired by the ECHR Model: An Indian Perspective

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Abstract

The absence of a comprehensive regional convention on human rights in Asia underscores the urgent need for an integrated framework to address the continent's diverse and complex human rights challenges. Unlike Europe, Africa and the Americas, Asia lacks a binding regional mechanism to uphold and safeguard human rights. A regional convention similar to the 'European Convention on Human Rights' (ECHR) in Asia could enhance human rights protection by providing a framework to address human rights violations in India and foster cooperation among member nations to tackle concerns related to human rights abuses in the country. A regional convention on human rights is needed to provide an additional layer of protection and accountability beyond national frameworks. Such a convention would not only fill the existing legal void but also strengthen the commitment of Asian countries. Asian countries should cooperate to draft and adopt a convention that sets clear, enforceable standards for human rights by drawing from international norms while considering regional specificities. An autonomous commission or court should be established to monitor compliance, investigate violations and provide remedies.

Key Words

Asian Convention on Human Rights, European Convention on Human Rights (ECHR), Human Rights, India, Regional Convention on Human Rights.

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Introduction

In India, violations of human rights are a matter of concern, particularly relating to issues such as caste discrimination, freedom of expression and discrimination against minorities. Although there is no formal global ranking for human rights violations in India, various international organizations have periodically assessed the country's human rights record. These evaluations have consistently highlighted concerns, indicating that the overall situation remains troubling. Under the National Human Rights Commission, many cases of murder in police custody, in judicial custody have come to light in India. International organizations such as Human Rights Watch, Amnesty and Freedom House, which periodically report on human rights violations, have reported serious human rights violations in India. Caste-based discrimination, particularly against Scheduled Castes and Scheduled Tribes, remains a significant issue, affecting access to education, employment and social justice. The National Human Rights Commission says human rights activists who work to expose violations and advocate for reform often face harassment and intimidation. Between 2019 and 2024, India received a total of 83 communications from various UN experts and responded to only 20 of them.¹

Several regional mechanisms have been established to protect human rights globally, such as ECHR, ACHR and ACHPR. Such mechanisms are vital for safeguarding and upholding human rights within a regional framework. No comprehensive mechanism currently exists in Asia or any dedicated regional human rights mechanism. This shortcoming limits the possibilities for cooperation and coordination among Asian countries to protect human rights. Although existing initiatives such as the ASEAN Intergovernmental Commission on Human Rights (AICHR) have laid the groundwork, they fall short due to their non-binding nature and limited enforcement capabilities.

Meaning and Legal Provisions Related to the Regional Convention on Human Rights

Meaning of Region

In international law, the term 'region' may mean "an area embracing the territories of a group of states. It is not necessary that the states constituting a region should belong to the same continent or they should be contiguous."² For this, there should be certain minimum values and uniformity in values and standards.

What is the Regional Convention on Human Rights?

These conventions are legal treaties that countries in certain geographic regions adopt by mutual agreement to protect and promote human rights. These

conventions strengthen and expand the provisions of global documents such as the UDHR. The covenant of LN under Article 21 had made a provision for the regional arrangements by stating that “Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace.”³ Specific clauses have been included in Chapter VIII of the UN Charter from Articles 52 to 54 regarding regional arrangements. Under paragraph 1 of Article 52, “Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.”⁴ Under Article 102 of the UN Charter, regional conventions are required to be registered with the UN Secretariat.⁵

The UN has a very complex mechanism for the advancement of human rights, so due to the absence of any effective authority for the protection of human rights, some states felt the need for the existence of such regional arrangements which have similar political traditions, independence and rule of law. Very slow progress is being made in this regard. Until now, only such regional agencies could be established for this, which are:

- a. European Convention on Human Rights (ECHR)
- b. The American Convention on Human Rights (ACHR)
- c. The African Charter on Human Rights and Peoples’ Rights (ACHPR)
- d. Arab Charter on Human Rights and People’s Rights.

ECHR

The ECHR has a total of 3 parts and 59 articles. This statute of the European Council established by the European Congress was adopted on 4 November 1950.⁶ It was adopted and entered into force on 3 November 1953. It has been accepted by 46 European countries, and now they are bound to implement the human rights mentioned in this treaty. As of now this convention has 16 protocols in total. The implementation mechanism of the ECHR is a multi-level system, which ensures the effective protection of human rights in member countries. It includes various institutions and procedures:

- a) European Commission of Human Rights (1954)
- b) European Court of Human Rights (ECtHR, 1959)
- c) Committee of Ministers of the Council of Europe (1949)

Under Protocol No. 11, which came into force on 1 November 1998, the full-time court replaced the above Commission and the Court of Human Rights.⁷

Full-time European Court on Human Rights

The following provisions have been made in this Full-time Court, which has been functioning since 1 November 1998:

- This court will function on a permanent basis. This court will be constituted with as many judges as there are High Contracting States.
- Any individual, NGO or group can apply directly to the Court against human rights violations by a Member State.
- The Court may give opinions on legal questions relating to the interpretation of the Convention and its Protocols.
- Under Protocol 16, national supreme courts may seek advice from the Court on human rights matters.⁸
- Decisions are legally binding. The final judgment is referred to the Committee of Ministers which supervises its execution.
- Infringement proceedings can also be initiated under Article 46(4).

In the case of *Hirst v. United Kingdom*⁹, John Hirst was convicted of murder in 1980. Under section 3 of the UK's "Representation of the People Act 1983", all convicted prisoners were deprived of the right to vote. Hirst challenged this restriction in the European Court. The Court's Grand Chamber ruled by a majority of 12–5 that the UK's voting ban on all convicted prisoners violated Article 3 of Protocol 1 of the European Convention. The UK initially opposed the decision but later implemented the reform in limited categories.

*Verein Klima Seniorinnen Schweiz v. Switzerland case*¹⁰ This marks the first time a country has been held guilty of human rights violations for inadequate action on climate change. The Court found that Switzerland did not take timely and sufficient action to protect citizens from the adverse effects of climate change. The Swiss government has agreed to review the decision and take necessary steps. However, in March 2025 the Committee of Ministers found that Switzerland has not yet fully complied with the Court's decision.

*A and others v. United Kingdom*¹¹ The case concerned the indefinite detention of 11 foreign nationals who were detained without trial under the UK's anti-terrorism law. The court said that the indefinite detention of these individuals was illegal. It made it clear that even in the name of national security, it is necessary to follow legal procedures and non-discriminatory measures. The Court decided that because of the violation of Articles 5(1) and 5(4), most applicants should be awarded

compensation. The effect of this decision was that the UK repealed the ATCSA and enacted the 'Prevention of Terrorism Act 2005' and later the 'Terrorism Prevention and Investigation Measures Act 2011'.

Why is the ECHR Model Inspiration? Compared to Other Regional Conventions- the American, European and African regional human rights conventions share similarities in their aim to protect fundamental rights but differ in their structure, scope and enforcement mechanisms. ECHR is characterized by its strong enforcement mechanisms. ECHR enforcement is through ECtHR, where individuals can directly petition the Court. Its decisions are binding. ACHR enforcement is through the Inter-American Commission and Court. Individuals cannot directly petition the court; cases go to the court through the commission. The enforcement of the ACHPR is through the African Commission and the Court on Human and Indigenous Rights. Individuals can petition the court after the concerned state makes a special declaration. The ECHR is interpreted over time and with social changes. This feature enables it to address modern human rights challenges. Other regional systems such as the African Charter and the American Convention are inspired by the ECHR.

The above analysis clearly shows that this regional convention has played a vital role in ensuring the enforcement and enhancement of human rights standards. Countries know that they may be sued internationally, so they preemptively improve laws and policies to protect human rights.

Asian Regional Convention on Human Rights

The need for this type of regional convention in Asia has been felt for a long time. Effective regional human rights mechanisms already exist in regions like Europe, America and Africa, while there is no concrete and binding system in this direction in Asia. Some proposals have been made in the region for the creation of an Asian Human Rights Convention. The Congress of Jurists of South-East Asia and the Pacific, held in Bangkok in 1965, discussed the draft of a regional human rights convention. 105 jurists from 16 countries participated in this conference and adopted the "Bangkok Declaration", which included conclusions and resolutions on the rule of law, representative government, economic and social development, and the role of lawyers in developing countries. Although the 1965 Bangkok Congress underlined the necessity for regional conventions, no concrete regional conventions immediately came into existence. Although several important declarations and initiatives have been made at the regional level to promote human rights, enforcement and monitoring are limited.

Religion, faith, language, differences in opinions and ideologies among states and their differing standards of values are some of the factors that have hindered the creation of a regional convention or commission in the Asia-Pacific region. All these factors have been a hindrance to the creation of a regional agency for the protection and promotion of human rights.

Need for a Regional Human Rights Convention in Asia - The Asia-Pacific region is the only region in the world that does not have a regional system, although it is home to nearly two-thirds of the global population. A regional convention in Asia would provide a mechanism for redress when national systems are inadequate. Regional Systems would often be more accessible to individuals. Regional conventions would be more effective in implementing international human rights standards at the local level. These mechanisms can hold states accountable for human rights violations and contribute to preventing future abuses by promoting accountability and ensuring remedies for victims.

Status of Human Rights in India- in India, human rights are protected through the following means:

- a. Indian Constitution: Articles 12 - 35 of the Constitution deal with fundamental rights which mainly include the right to equality, freedom, life and personal liberty, education and culture and the right to constitutional remedies.
- b. Protection of Human Rights Act, 1993: Under this Act, the National Human Rights Commission (NHRC) was established, which monitors and protects human rights.
- c. International treaties: India has signed several international human rights treaties, such as ICCPR and ICESCR.

Despite various legal provisions in the context of the protection of human rights, there are reports of violation of these rights, which particularly affect vulnerable groups such as Dalits, Adivasis and religious minorities. Various reports have revealed human rights violations in India, such as: The NHRC recorded 126 deaths in police custody, 1673 deaths in judicial custody and 55 alleged extrajudicial killings in the first nine months of 2023.¹² Indian authorities continue to enforce the largest number of internet shutdowns in the world, violating international human rights norms.¹³ The 2024 Freedom House report gave India a score of 66 out of 100, with 33/40 for political rights and 33/60 for civil liberties, showing a decline from previous years, especially in the case of freedom of expression.¹⁴ According to the 2024 Amnesty International report, eight human rights activists in Maharashtra were detained without trial under the UAPA, along with six Muslim students and human rights activists in connection with the religious violence in Delhi in February 2020.¹⁵ Hate speeches against minorities in India increased by 74.4% in 2024, from 668 incidents in 2023 to 1,165 in 2024.¹⁶ Along with this, more than 50,000 crimes were registered against Scheduled Castes and more than 8,000 against Adivasis.¹⁷ The increasing cases of human rights violations in India day by day is a matter of serious concern and in such a situation, the Asian Human Rights Convention can be a welfare step.

Suggestions:

1. Most of the countries in Asia have National Human Rights Commissions. Networking and cooperation among these commissions should be promoted.
2. The United Nations should organize seminars and conferences to generate interest in the creation of a regional agency in relation to the Asian Regional Convention.
3. Workshops held under the auspices of the UN (e.g. Manila 1990, Jakarta 1993, Seoul 1994) have been instrumental in building consensus towards a regional system.

4. A common code and system for the protection of human rights should be adopted on a regional basis.
5. A coordinating committee should be established to oversee the overall functioning of all regional bodies.
6. The establishment of an Asian Court of Human Rights would enable judicial redress of human rights violations.
7. A regional human rights court or commission, in conjunction with national courts, could provide more effective and speedy justice in cases of human rights violations.
8. The convention should be designed to adopt universal human rights standards while respecting Asia's cultural and political diversity.
9. Civil society organizations, human rights defenders and marginalized communities should be actively involved in the drafting and implementation processes to ensure that the convention addresses ground realities.

Conclusion:

The ECHR has played a vital role in protecting and enforcing human rights in Europe. It has provided individuals with access to justice as well as inspired member states to reform their laws and policies. The ECHR's model can also serve as an inspiration for other regions such as Asia where regional human rights mechanisms are needed. The establishment of a regional human rights convention is essential in India and Asia. This mechanism can play an important role in the protection, enforcement and promotion of human rights, taking into account the regional context. A regional convention can provide additional avenues for redress and accountability, especially in areas where domestic laws fall short or face challenges in implementation. By addressing concerns related to caste discrimination, freedom of expression and the treatment of minorities, a regional convention can contribute to a more inclusive and just society in India.

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