

M K NAMBYAR SAARCLAW JOURNAL

Volume VI - VII

July 2017 - June 2018



**M K NAMBYAR SAARCLAW CENTRE
NALSAR UNIVERSITY OF LAW
HYDERABAD**



ISSN 2346-8646

M K NAMBYAR SAARCLAW JOURNAL

VOLUME VI-VII

JULY 2017 – JUNE 2018

PATRON

PADMA VIBHUSHAN SHRI K K VENUGOPAL
SENIOR ADVOCATE
SUPREME COURT OF INDIA

CHIEF ADVISOR

PROF. (DR.) FAIZAN MUSTAFA
VICE-CHANCELLOR
NALSAR UNIVERSITY OF LAW

CHIEF EDITOR

PROF. (DR.) P. V. RAO
VISITING FACULTY
NALSAR UNIVERSITY OF LAW

EDITOR

PROF. (DR.) V. BALAKISTA REDDY
REGISTRAR & COORDINATOR
M K NAMBYAR SAARCLAW CENTRE
NALSAR UNIVERSITY OF LAW

ASSOCIATE EDITOR

JYOTI
RESEARCH ASSOCIATE

A Bi-annual Journal Published by M K Nambyar SAARCLaw Centre,
NALSAR University of Law, Hyderabad



Published by
THE REGISTRAR
NALSAR UNIVERSITY OF LAW,
Shameerpet, Medchal District
Hyderabad – 500 101.

COPYRIGHT POLICY

The contribution accepted for publication and the copyright therein shall remain jointly with the contributor and the MKNSLJ. Any person desiring to use the MKNSLJ's material for editorial purposes, research or private study can do so with prior written permission of the Editorial Board.

INDEMNIFICATION POLICY

All contributors by submitting any contribution towards the MKNSLJ hereby consent to indemnify NALSAR University of Law, Hyderabad and MKNSLJ from and against all claims, suits and consequences based on any claim of copyright infringement / unauthorized use / violation of any right which may arise as a result of their contribution being published in the MKNSLJ.

CITATION FORMAT
[VOLUME] MKNSLJ[PAGE] ([YEAR])
ISSN 2346-8646

TABLE OF CONTENTS

Editorial	i
Coordinator	iii
M K Nambyar SAARCLaw Centre Profile	iv
Articles	
SAARC in the 21 st Century: Predicaments and Ambiguities <i>Dr. Anju Lis Kurian and Dr. C. Vinodan</i>	1
Constitution of the People's Republic of Bangladesh <i>Dr. Shampa Dev</i>	19
The Constitution of the Republic of Maldives, 2008 <i>Dr. K. Saibaba</i>	37
Constitutional Development in Nepal with Special Reference to 2015 Constitution <i>Prof. B. C. Upreti</i>	67
Tryst with Constituent Powers: Constitutional History and Future of Sri Lanka <i>Lakshana R</i>	95
Australia Observer Status in SAARC Conducive to South Asia's Peace and Prosperity <i>Prof. Y. Yagama Reddy</i>	115
SAARC – Japan Relations: Shifting Trends <i>Prof. A. Lakshmana Chetty</i>	137
European Union's Capabilities - Ten Lessons for SAARC <i>Dr. S. Venkata Krishnan</i>	161
News Reports	
'SAARC can learn from ASEAN': Kishore Mahbubani Interview conducted by <i>Suhasini Haidar J</i> <i>The Hindu, India</i>	179
A Nepal-India win-win <i>Kanak Mani Dixit</i> <i>The Hindu, India</i>	187
Obituary	193
Guidelines for Authors	195

Editorial

South Asian countries are rewriting their basic laws. In order to adopt to the changing political aspirations and domestic demands for political reforms, many a regional states are in the process of renewing their respective constitutions. Last few years therefore have seen the Himalayan states of Bhutan and Nepal ushering in major constitutional reforms. It is the measure of the Bhutan monarchy's wisdom that sensing the political movements like the Arab Spring which resulted in overthrowing monarchy and authoritarian regimes in countries such as Egypt, Libya, Tunisia as also the on-going anti-monarch civil war in Syria, the king voluntarily abdicated royal power in favour of democratic system. So much so since 2007 Bhutan is transformed almost into a constitutional monarchy. The new constitution introduced transferred power to popular mandate. Democratic elections based on adult franchise send popularly elected representatives to the legislature. Already the tiny state, in its new incarnation as a representative democracy has peacefully conducted two parliamentary elections contested by political parties of different ideological and political hues. In the political history of South Asia that the royal family of Bhutan by voluntarily transferring power from an absolute monarchy to a popular representative assembly has established a healthy and exemplary precedent, a precedent of vary rare occurrence in oriental Asia. That it had worked so far without serious opposition and turbulence is testimony to the democratic spirit of Bhutanese people.

Nepal offers a different pattern of constitutional reforms. Rift between the monarchy and political parties had a fairly long history until the monarchy had to be forcibly overthrown when the last king adamantly and arbitrarily handled affairs of the state, much against popular pulse. Ever since, long gestation with varying constitutional proposals marked the Himalayan state which

witnessed serious political dissent and instability. Only a couple of years ago, amidst much political turmoil a new constitution was unveiled. Recently held parliamentary election was based on the new Nepalese constitution which brought to power a left-wing government in 2017.

Island republic of Sri Lanka, after ending a quarter century of Tamil-Sinhalese civil war, is attempting to amend existing constitution aimed at reconciling the interests and aspirations of the majority and minority communities.

In view of these recent constitutional developments in the SAARC region, the current issue has attempted to publish a special issue on constitutions of the countries concerned. There of course are some glaring omissions which despite serious editorial efforts could not be overcome.

Wishing the readers a happy new year.

Prof. (Dr.) P.V.Rao
Editor-in-chief

Coordinator

M K Nambyar SAARC Law Centre located at NALSAR Law University, Hyderabad is a unique institution committed to promote intellectual debate on legal and non-legal issues of concern to SAARC and its member countries. Over the years the Centre is actively engaged in promoting SAARC studies through graduate /undergraduate courses, seminars, peer reviewed journal and guest lectures by eminent scholars.

The Editorial Committee of SAARCLaw Centre this time decided to compile interpretative articles on constitutional and political systems of each member country of SAARC through this volume. It is common knowledge quite a few countries in the region, prodded by their unique political dynamics and socio-economic demands, are rewriting the original basic law of the State. It is equally true that published literature on the subject carried by a single volume is much wanting. Rather to fill this gap and as well present updated scholarship on the Constitutional and political systems of SAARC countries, the current volume is conceived. Suggestively, issues that could constitute part of the article planned are sketched as under such as Constitutional evolution and philosophy; state organs and division of powers; legislative power and procedure; status of the judiciary and judicial review; citizenship and rights; recent political dynamics and constitutional changes. SAARC Charter: mandate, interpretation and need for reform; Major SAARC Declarations: execution and progress; SAARC Democracy Charter.

Needless to say that the contributions not only will help in enriching quality of the Journal but is going to benefit wider scholarship as well.

Prof. (Dr.) V. Balakista Reddy

Professor of Law, Registrar & Coordinator

M K Nambyar SAARCLaw Centre

NALSAR University of Law

M K Nambyar SAARCLaw Centre Profile

Established in 2003 by Padma Vibushan K K Venugopal in memory of his father, the M K Nambyar SAARCLaw Centre (MKNSLC) is unique in its aim to study legal issues pertaining to SAARC countries and create networks and spaces for engagement amongst the peoples of these countries. The primary aim of the Centre is to encourage and enhance legal research in the discipline of SAARC studies. MKNSLC follows legal developments relevant to SAARC countries keenly and strives to spread awareness about the same by publishing legal journals and newsletters. MKNSLC also conducts conferences, seminars, workshops at national and international levels. These conferences not only seek to address the key legal issues as identified by scholars time to time but also create platform for learning communities on South Asian developments. The proceedings of each conference are regularly compiled and after through editing published as monographs/books by the Centre.

In pursuit of its objectives MKNSLC has over the years sponsored several academic and research programmes including conferences, seminars, newsletters, lectures and workshops. Monthly Seminars are encouraged along with student presentations and lectures. The Centre had the privilege of its monthly seminars being addressed by eminent personalities like Padma Bhushan Shri K. Padmanabhaiah, IAS (former Home Secretary, Government of India), Amb. A. N. Ram, IFS (former Ambassador, Government of India), Prof B. S. Chimni (JNU) and Dr. P. S. Rao (former Additional Secretary and Legal Advisor to the Ministry of External Affairs, Government of India.), Amb. Sudhir T Devare, (Secretary, Ministry of Foreign Affairs) to name a few. Through these regular activities mentioned above the Centre is making a positive contribution to the process of resolving bilateral disputes in the SAARC region through peaceful means.

MKNSLC consistently endeavours to bring together the legal and non-legal communities from SAARC region for promoting closer understanding, exchange of ideas and dissemination of information. It is hoped such sustained intellectual activity undertaken by the Centre will help foster co-operation among the peoples of South Asian region.

MKNSLC has its own well equipped infrastructure that includes one audio visual conference hall with a sitting capacity of 250 persons, 3 seminar halls, one moot court room and judges' lounge.

Centre's Objectives

- To elevate a MKNSLC gradually into an Advanced Centre for Regional Legal Studies
- To promote Mooting activities on contemporary issues of relevance to SAARC region
- To conduct training programmes for Law Teachers and judicial officials of the SAARC Region
- Annually organise SAARCLAW National and International Conferences and seminars
- To sponsor research projects/working papers on SAARC issues
- To patronize publications through Newsletters, journals and Books on SAARC
- To promote faculty-student exchange programme with SAARC Universities

Conferences and Seminars Conducted

Two day International Conference on Water Sharing in SAARC Region: Legal Issues and Challenges on March 25-26, 2017: The M K Nambyar SAARCLaw Centre, NALSAR University, Hyderabad organized two day International Conference on 'Water Sharing in the SAARC Region: Legal Issues and Challenges' on March 25-26, 2017 at NALSAR University campus.

Ambassador A N Ram, Former Secretary, Ministry of External Affairs, Government of India & Former Ambassador of India inaugurated the programme. Prof. B C Upreti, Member, Prime Minister's Eminent Persons Group, Government of India and a very renowned South Asian scholar was the Key Note Speaker for the programme. Prof. Saligram Bhatt, Adjunct professor, NALSAR and Prof. G S Sachdeva, Adjunct Professor, NALSAR were the Guest of Honour for the occasion.

The proposed Conference aimed at debating the wide range of issues relating to regional water resources such as the profiles of South Asian water bodies, sources of water-sharing disputes, legal conventions/instruments, of water management, major issues and disputes, water as a source of regional energy security, sustainable and ecological dimensions of water resources. It was intended to bring together leading academicians, students, specialists, policy analysts, defense personnel and think tanks from India and abroad, SAARC states in particular.

The conference had received a huge response from Universities across the country as well from other SAARC Countries including Professors from Bangladesh and Sri Lanka. In India, we had many professors, advocates and students as participants from the institutions and Centres working in the area of SAARC including, South Asian University (SAU), New Delhi, Jawaharlal Nehru University (JNU), New Delhi, South Asia Consortium for Interdisciplinary Water Resources Studies (SaciWATERs), Hyderabad, etc.

Comparative Constitutional Law Perspectives from November 21-26, 2016: M K Nambyar SAARCLaw Centre in coordination with the Centre for Constitutional Law, Public Policy and Governance, NALSAR had successfully conducted a one week course on Comparative Constitutional Law Perspectives from November 21-26, 2016 at NALSAR Campus.

The seminar aimed at improving the understanding of comparative constitutional law and its use in the interpretation of the Indian Constitution for students interested in constitutional law. The theme includes National constitutions and globalizing legal order, Equality and non-discrimination in comparative constitutions, Socio-economic rights and comparative perspectives, South Asian Constitutionalism and Constitutional Courts and the Constitution. Hon'ble Justice B P Jeevan Reddy, Former Judge, Supreme Court of India and Former Chairman, Law Commission of India inaugurated the program. Lectures by learned scholars like Prof. M P Singh, NLU, Delhi, Prof. IshwaraBhat, NUJS, Kolkata, Dr. Alexander Fischer, Jindal law School, Sonapat, Prof. G B Reddy, Osmania university, Hyderabad, Dr. Nicole Toppervein, Ximpluse, Switzerland, and Prof. Faizan Mustafa, NALSAR, Hyderabad were planned around these and other related themes to provide expert insights into the merits and demerits of the use of comparative constitutional material.

A total number of 59 participants from Universities across the country and SAARC Countries especially Nepal attended the six days program out of which 54 participants were from India and 5 participants were from Nepal.

SAARC in the 21st Century: Predicaments and Ambiguities

Dr. Anju Lis Kurian and Dr. C. Vinodan***

Introduction

The South Asian Association for Regional Cooperation was established under Article 52 of the United Nations' Charter on 8th December 1985 for catering cosmos of regional arrangements or agencies, relating to the maintenance of international peace and security which in turn stimulate the process of economic and social discourses *via* concerted action. South Asia is a dynamic and complex region which is one of the fastest growing regions in the world and has attested the potential of emergence as a significant economic entity in the world economic arena (Iqubal, 2006). The region encompasses governments contending to maintain control of their countries, nuclear powers that coexist in an anxious and often tense relationship and conflicts with several militant and extremist groups. These cornucopias of factors make the region a subject of appreciable strategic significance in the global arena (Pattnaik, 2006).

The SAARC region lies in the South Himalayas surrounded by Hindu Kush mountains supports more than one-fifth of the world's inhabitants is one of the largest regional organizations in the world. It should be noted that almost half of the world's poor live in the region. Geography coupled with high levels of poverty and population density has rendered South Asia especially vulnerable to the impacts of non- traditional challenges. The political sphere of the South Asian region is diverse with democracy, hereditary monarchy and military dictatorship (Sharma 2009: 907). In South

* UGC Post Doctoral Fellow, School of International Relations and Politics, Mahatma Gandhi University, P.D Hills, Kottayam, Kerala.

** Assistant Professor, School of International Relations and Politics, Mahatma Gandhi University, P.D Hills, Kottayam, Kerala, India.

Asia, the regional cooperation got salience with the pioneering initiative taken by late President Zia Ur Rahman of Bangladesh who was involved in propagating the cause of institutionalizing regional economic cooperation in South Asia. Several factors like political, economic, security and potentiality of mutual economic benefits through regional cooperation paves the way for establishing regional organisation in South Asia.

Initially SAARC was established comprising Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka and held first Summit in the same year in Dhaka where Charter of the South Asian Association for Regional Cooperation was signed (Cheema 1999a: 94). The tarrying bequests of South Asia's colonial past, uncontrolled human and other movements across sensitive, porous unsettled borders, ethnic and religious differences, intra-regional economic disparities and resultant bilateral disputes makes the region extra sensitive with coherent international reverberations time to time.

SAARC and Regionalism

Regionalism and intra-regional interaction is considered as pivotal in international arena and relations. Every nation state must strengthen their regional economic inter-linkages in the current era of globalization and liberalization for better trade and co-operation (Rahman, 2012). The rationale for the foundation of SAARC was to forge particularly economic cooperation among the member states. The postulation was that the common culture, civilization and heritage of all the seven post-colonial states of South Asia naturally would bring an extent of unity and cooperation among them which will bring social and economic development in the region and would create an integrated market that could remove poverty, illiteracy and unemployment, the common probs (Desai, 2010). Sovereign equality, territorial integrity, political independence and non-interference in internal affairs are some of the key principles behind the creation of SAARC as defined in its

charter. The SAARC region is enshrining a potentially vital geo-strategic position which is rich in deluge of energy resources and it has the potential to serve as an engine of world economic growth (Karim, 2013).

The SAARC Charter kept bilateral issues out of its horizon while emphasized on multilateral cooperation. At the same time the member states were free to develop any other bilateral and multilateral cooperation thought to be beneficial for them. There is a great expectation that regional cooperation would endow with economic cooperation in spite of the political differences prevailed in their relations and the need to cooperate in various non-political fields were also adumbrated. But in reality, the bilateral disputes have in many cases stymied the prospects of multilateral cooperation through the forum of SAARC (Lahiri 2007: 19-20).

Unlike many other regional organizations SAARC was not an outcome of the efforts of the leading countries of the region and no outsider was either directly or indirectly involved in its creation. In fact, it was the product of local endeavours and came into being through the concerted strives of smaller countries. A number of regional organizations were born in response to the efforts of the interested superpowers and survived under their patronage whereas SAARC is the product of steadily growing significance attached to the principle of regionalism. It took two years of continuous efforts to institutionalize the idea of South Asian regional organization. The realization of cooperative ventures rapidly gained momentum in South Asia in the face of complex disputes in the region.

SAARC has started off as a grouping of seven South Asian nations has expanded to embrace Afghanistan as the eighth member in its summit held at Dhaka in 2005. The European Union, People's Republic of China, Japan, South Korea and USA are gained observer status in SAARC. By the formation of SAARC, the entire region has now access to Central Asia, Myanmar as well as West Asia. The SAARC member states has not only added strength and

vitality to it but also enabled it to get connected to the wider world and thereby play a more dynamic role in the global arena (Ahmed, 2013). Even though, the SAARC processes received periodic shocks that considerably slowed down the desired drive towards South Asian cooperation, the advent of SAARC intensified cooperation among the South Asian states. All the time the fundamental spirit of SAARC has been persistently showered with reaffirmations of cooperation by the heads of South Asian governments. Their aspiration for closer cooperation has facilitated all internal as well as external endeavours aimed at pulling South Asia out of a web of conflict into a cooperative network.

In reality the most basic prerequisite for constructing interstate diplomatic and economic ties is that to resolve the ongoing disputes which have hitherto taken an extremely heavy toll (Cheema et. al. 2006: 212). Apart from the obvious geographical unity, South Asia has the longest history of a coherent and united polity, economy and administration along with a unified civilizational tradition as compared to other regional organizations that exist today. By taking this as a significant factor the SAARC Charter underlines the common ties of history and culture that bind member states together. Besides successive summit declarations, SAARC have emphasized the common values shared by the people of the region which are rooted in social, ethnic, cultural as well as historical elements. Yet, the trauma of partition, the intensification of assertive nationalism, the drift away from democratic freedoms and strategic as well as ideological rivalries between the member nations have become an obstacle in the way of the united history of the South Asian region (Narang 2006: 100).

In South Asia the formation of SAARC was a momentous development in the direction of regional cooperation. In the midst of their strong mutual differences as well as trust deficit, the South Asian nations agreed to sign an agreement encouraging regional cooperation (Giri et al., 2015). It is an organization rooted in the

consciousness that in an ever more interdependent world, the objectives of peace, freedom, social justice and economic prosperity are best achieved in the region by fostering mutual understanding, good neighbourly relations and meaningful cooperation among the member states, which are bound by ties of history and culture (www.saarc-sec.org). SAARC has survived the heterogeneous levels of economic development and bilateral political conflicts among the countries and grown in its activities over these years. In the recent years it has entered into core areas of economic cooperation in connection with mutual trade expansion and joint industrial and non-industrial ventures serving regional market (Nayak, 2013).

Bi-lateral issues in SAARC

SAARC is very unique as a regional intergovernmental organization as far as regional infringes are pertained. The member states do not have a common approach in adjudicating interstate altercates in the region. The role of extra-regional powers in settling regional disputes is rejected by India time to time and underlines on bilateralism only. Bilateral disputes plague the association and, without mutual trust, no regional organization can function effectively (Kher, 2012; Shaheen, 2013). India and Pakistan are the two major drivers in the South Asian subcontinent. But the conflict between each other acts as the foremost barrier in the smooth functioning of the SAARC. In the Pakistani perspective, India is a dominant hegemonic player in South Asian system. On the other side India observes Pakistan as its major competitor. Actually India is likely to play the role of a regional security manager instead of domination. India is always favouring bilateral negotiation and prefers close economic as well as cultural relations with Pakistan though it wishes to maintain a regional power balance in its advantage.

SAARC: Between Anarchy and Order

The SAARC politics is an amalgamation of partition, emergence, expansion, geopolitical contests, emergence as nuclear weapon powers, civil wars, Maoist insurgency, militant Islamic movements and cross-border terrorism (Puran, 2015). It is well evident that the region's security architecture is articulated by the interplay of political forces, interests and policies in the region. Since independence, India and Pakistan have been locked in the grip of hostility based on political, ethno-religious and territorial stresses. There are three wars and several occasions in which the risk of war towered large. The region is the playground of violent ethnic and religious conflict and terrorism, which cross borders easily due to the weakness of states and the presence of the same ethnic and religious strata in neighbouring countries. Moreover each country is provoking or fuelling domestic instability and cross-border violence geared for supremacy and short term benefits. The competing claims on Kashmir have really shaken the international community when both countries have tested nuclear weapons. Most of the member states have acute imbalance and regular turns of violence which include: war-torn Afghanistan (Taliban); Sri Lanka (Tamil), and Nepal (civil war). Since its inception, SAARC has done cipher to settle or to meliorate the issues. The annual summit meetings of heads of state have failed to mitigate conflicts and violence.

The creation of South Asian Free Trade Agreement (SAFTA), SAARC Social Charter, a convention on fighting terrorism, and a blueprint for poverty alleviation *vis-a-vis* SAARC Development Goals (SDGs) and the establishment of regional institutions such as the SAARC Development Fund, the SAARC Food Bank, and the South Asian University in recent years are landmark initiatives, several political and cross-border dilemmas make the SAARC a cumbersome association with diverse interests. The combination of historical, geographical, ethno-religious, and political factors, some

of which are independent of Pakistan and beyond India's control, has snarl-up the SAARC. The SAARC countries lack an inducement to work together to overcome the hurdles for a better future.

Rivers in South Asia: Source of Cooperation or Conflict?

The past few decades has witnessed an overwhelming increase in international cooperation over the major rivers in South Asia. The region is gifted with ample water resources but water is becoming a deprecating resource as a result of politics in the water sector both by international and domestic players. Consequently, the impact of climate change was also a driving force behind the depletion of water resources in the region (Naz, 2014). The river basins in the region pose numerous security challenges as these are the sources of drinking water, irrigation and hydropower as well as key for social, economic and environmental development. The major river basins in the region are the Indus River in the west and the Ganga-Brahamaputra-Meghna (GBM) in the east. The quest of the South Asian governments to control the great rivers of their region is often resulted in looming conflicts and dialogues.

South Asian trans-boundary issues are inextricably embedded in regional geopolitics since the main trans-national river systems involve countries that are unequal in size and power and have been involved in war-fares and conflicts in the past decades. The major river systems - the Indus, the Ganges and the Brahmaputra are all linked to the Tibet Autonomous Region (TAR) of China. The Indus basin connects China, Afghanistan, Pakistan and India. On the other hand, the Brahmaputra and the Ganga interconnect China, Bhutan, India, Nepal and Bangladesh. India was involved in military conflicts with China and Pakistan and tensions related to water with Pakistan and Bangladesh. India regards Nepal as its exceptional arena of influence and has impregnable concerns in Nepal's rivers.

The lack of confidence between the member countries in the SAARC are further aggravated by the absence of forward thinking which systematically tormented the kinship among the co-riparians (Adhikari, 2014). For addressing all the matters in relation to trans-boundary water issues in the SAARC region properly legally and institutionally, all the co-riparian countries in the region must come together for adopting a practical promising and sharing system of water governance which rely on international legal principles. Otherwise, the region is propelled with complex and unremitting tensions which justifies the comment of Mark Twain, “*Whiskey is for drinking; water is for fighting over*”.

SAARC and Emerging Challenges: Climate Change Implications

The South Asia region extends from the towering Himalayan peaks of Bhutan and Nepal, to the productive delta of Bangladesh and peninsula of India, and the stunning islands of Sri Lanka and the Maldives in the Indian Ocean. The mega diverse region is experiencing a plethora of climate change impacts, including glacial melt, forest fires, rising sea levels, mountain and coastal soil erosion. Abnormal monsoon and rainfall patterns in the region have resulted in strong vulnerabilities in agriculture, forestry, and traditional fishing affecting livelihood options. The region is staggeringly vulnerable to natural disasters, and about 750 million people - 50% of South Asia's population - was affected by at least one type of disaster between 1990 and 2008 (World Bank, 2009). In South Asia, the adaptation and mitigation of climate change is unquestionably an extremely inspirational goal for regional cooperation. Fifth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) highlights that the threat is real and its consequences can be disastrous for everybody which are already manifesting. So there are clear benefits from cooperation as well as collective action and the countries of the region cannot ignore this imperative (Gokarn 2014: 28). The crisis of clean

energy and renewables are the areas to push energy cooperation since the region has vast untapped energy resources. Thus the region can get rid of common energy crisis that the SAARC nations are facing and cementing cooperation among the members. Furthermore SAARC nations are on the cusp of energy intensive economic growth (Mehta 2014: 17-18).

SAARC and Regional Connectivity

Transport networks between SAARC member countries continue to remain garbled due to a myriad of reasons which in turn sabotage the engine of economic growth in the region. It should be noted that the region's springing up prosperity was not shared equally, and there are clear indications of rising inequality, not only within but also between member states. The megadiverse South Asia renders immense potential for trade, investment, and economic growth which is well demonstrated by the remarkable success in recent decades. Geographically, the South Asia region links Central and West Asia with Southeast and East Asia. Some of the SAARC member countries are also members of several innovative regional and sub-regional conglomerations such as Economic Co-operation Organization (ECO), Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC), East Asia summit (EAS) etc. However, the member countries are incessantly challenged in maintaining the regional competitiveness and complementarity which is well contended by strengthening regional connectivity *via* road, rail and inland waterways for better trade facilitation. The 12th SAARC summit in 2004 garnered to enhance multimodal transport connectivity among SAARC member states and undertook the SAARC Regional Multimodal Transport Study (SRMTS) during 2005-06 (SAARC, 2006) (Table 1).

Road connectivity
1. Karachi-Lahore-New Delhi-Kolkata-Benapole-Dhaka-Akhaura/Agartala
2. Kathmandu-Birgunj/Raxaul-Kolkata/Haldia
3. Thimphu-Phuentsholing-Jaigon-Kolkata/Haldia
4. Kathmandu-Kakarvitta-Phulbari-Banglabandh-Mongla/Chittagong
5. Sandrop Jongkhar-Guwahati-Shillong-Sylhet-Dhaka-Kolkata
6. Agartala-Akhaura-Chittagong
7. Kathmandu-Nepalganj-New Delhi-LahoreKarachi
8. Thimphu-Phuentsholing-Jaigon-Chengrabandha-Burimari-Mongla/Chittagong
9. Maldha-Shibganj-Jamuna Bridge (Bangladesh)
10. Kathmandu-Bhairahawa–Sunauli-Lucknow
Rail connectivity
1. Lahore-Delhi/ Kolkata-Dhaka-Mahishasan-Imphal
2. Karachi-Hyderabad-KhokraparMunabao-Barmer-Jodhpur
3. Birgunj - Raxaul-Haldia/Kolkata
4. Birgunj-Raxaul-Katihar-RohanpurChittagong with links to Jogbani and Agartala
5. Colombo-Chennai

Inland waterways connectivity
1. Kolkata-Haldia-Raimongal-Mongla-Kaukhali-Barisal-Hizla-Chandpur-Narayanganj Aricha-Sirajganj-Bahadurabad-Chilmari-Pandu
2. Kolkata-Haldia-Raimongal-Mongla-Kaukhali-Barisal-Hizla-Chandpur-Narayanganj Bhairabbazar-Ajmiriganj-Markuli-Sherpur-Fenchuganj-Zakiganj-Karimganj
Maritime gateways
1. Karachi (Pakistan)
2. Port Bin Qasim (Pakistan)
3. JNPT (India)
4. Cochin (India)
5. Tuticorin Port (India)
6. Kolkata/ Haldia (India)
7. Chittagong Port (Bangladesh)
8. Mongla Port (Bangladesh)
9. Male Commercial Harbour
10. Colombo Port (Sri Lanka)

Table 1: Priority Routes/Corridors for regional connectivity among SAARC member states as proposed under SRMTS

Brooks (2010) clearly illustrates that stronger connectivity not only strengthens the intra- and inter-regional trade but also engenders greater income and prosperity. Unless member countries allow cross-border infrastructure to facilitate regional connectivity, the

potential of regional growth and economic integration of the region will escalate with better human development indices.

Towards a SAARC Community?

Since its inception little has changed, most have traditionally continued suspicious of each other's' motives, have steadily manifested an avidity to divulge new possibilities to foster their own development vistas and inducting a confidence-building process which might ultimately have commendable political outcomes. But it remains susceptible to criticism that it has not moved fast enough in the core areas by overcoming some of the serious hurdles which prevent the member countries in really engaging themselves in meaningful cooperation for the benefit of their people who make up one fifth of the world's population.

Unfortunately, South Asia today presents a mixed picture of conflict and cooperation. Pakistan and India have yet to negotiate their way successfully from confrontation to cooperation. Economic cooperation is progressing in a halting manner. Political cooperation and consultation is very weak. The external relations of South Asia are developing slowly but in a steady manner.

SAARC in the Next Decade

SAARC, the '*umbrella initiative*' for South Asia is buffeted by herculean forces of change, especially globalisation. Globalisation has both positive (more Foreign Direct Investment, hike in trade volumes *etc.*) and negative implications (burgeoning inequalities, lead role for non-state actors *etc.*) among south Asian countries. Human migration from the agrarian sphere to the low-value services sphere is striking in the region's growth dynamics is a common phenomenon across the member states. Due to various decelerations the economic growth accomplished will not be sustainable in the region. Currently, the region has a panoramic role in world order, as the centre of gravity is visibly shifting to India and China. Economic cooperation and connectivity in South

Asia can pave the way for shared problem solving and greater economic development for all member states.

It should be noted that the Indo-Pak rivalry is the key factor that has impeded regional cooperation and made the region unstable. The Afghanistan issues and the presence of Al Qaeda and Taliban in the Afghanistan-Pakistan region also exert profound scourges and panics to regional and international peace and stability. The enfeebling internal troubles among the South Asian countries has resulted in enlisting in the top ten of the 'Failed State Index' developed by the Foreign Policy Institute and several others rank quite high too. Moreover, the non-state actors with cross border nexus make the situation more assailable. Gupta (2011) has identified various vital drivers that will influence the South Asian region in near future which is crafting the future for South Asia ranging from united dream or regional nightmare. Moreover, the member states are repeatedly chevied with an array of multiple intra-region and intra-state conflicts which have since decades been at the vanguard of political and public life causing economic development to almost always be a subservient objective will become more vulgar in future.

Conclusion

Regional cooperation and integration has vast potential for accelerating economic growth, reducing poverty and confronting non-traditional challenges across the globe which is well suited for South Asia. The South Asian region is undergoing rapid transformation in the globalised era. Powered by the dynamic growth of the Indian economy, it is the fastest- growing region in the world. South Asia can be propelled faster to find its rightful place in the world if its member states develop greater regional cooperation and connectivity. SAARC has survived and grown in its activities over the years despite heterogeneous levels of economic development as well as bilateral political conflicts among member states. The most vital and serious problem that

divide South Asia is the Indo-Pak conflict which is exacerbated by the nuclear tests and created new areas of tension and dissonance. It is crucial that the South Asian states have a regional outlook with regard to security matters to overcome the recurrent setbacks caused by continued political differences among the member states. Even though it is unimaginable to delegate some of the political power to SAARC but it would be the best way to develop such a regional outlook. In a region like South Asia the security comes only through mutual sharing by the way SAARC has an enormous potential to contribute to the progress of greater regional cooperation as well as collaboration. Thus the need of the hour is to conjoin a pragmatic move towards the idea of regional cooperation. It is well cited that with the creation of SAARC, South Asia has emerged as a regional entity in the international political arena. Above all the coherence and resonance in the region will boost the individual potency of SAARC member states as well as that of the South Asian region as a whole in the global power ladder. In recent years there has a shift in India's big brotherly attitude to sharing of its fruits of development like economic growth and technological advancement with other SAARC members. However the member states are reluctant to accept the shift in India's outlook and policies due to the aeonian Indo-Pak conflicts and it's strive for emerging power status at the international scenario. The tense political relations among some SAARC nations adversely affect the economy of the entire region which includes the mobility of resources as well as people within the domain. In reality India seeks SAARC as a forum to resolve global challenges such as climate change, energy security, terrorism, human rights etc at the regional level. In fact SAARC is getting more relevance in the 21st century by the worldwide as well as regional efforts in mitigating climate change, energy cooperation, and expansion of renewable energy sources, avert terrorism and so on. However, the pernicious mindset of the member states has eroded goodwill and confidence, and has

generated mutual mistrust and suspicion in the region even from historic times. It can be optimistic that, if the member states can be more extroverted and cooperative; if they can leave their historical baggage and squabbling discourses behind and move forward with a sense of trust and understanding by a concerted strong regional mechanism, the peoples of South Asia could hope to enjoy a better and peaceful future with unimaginable reinvigorations.

References

1. Adhikari, K. N. (2014): “Conflict and Cooperation on South Asian Water Resources”, *IPRI Journal*, XIV(2): 45-62.
2. Biswas, Asit K. (2011): “Cooperation or conflict in transboundary water management: case study of South Asia”, *Hydrological Sciences Journal*, 56(4): 662-670.
3. Brooks, Douglas (2010): “Regional Cooperation, Infrastructure and Trade Costs in Asia”, In: Douglas Brooks and Susan Stone (Eds.), *Trade Facilitation and Regional Cooperation in Asia*, Tokyo: Edward Elgar Cheltenham and Asian Development Bank Institute (ADBI).
4. Cheema, Pervez Iqbal (1999): “SAARC Needs Revamping”, in Eric Gonsalves and Nancy Jetly, (Eds.), *Dynamics of South Asia: Regional Cooperation and SAARC*, New Delhi: Sage Publications.
5. Cheema, Pervez Iqbal, Masqudul Hasan Nuri and Ahmad Rashid Malik (2006): *Political Violence and Terrorism in South Asia*, Islamabad: Islamabad Policy Research Institute.
6. De, Prabir (2013): *Connectivity, Trade Facilitation and Regional Cooperation in South Asia*, Commonwealth Secretariat.
7. Desai, V. V. (2010): “The Political Economy of Regional Cooperation in South Asia”, ADB Working Paper Series on

Regional Economic Integration, No. 54, Asian Development Bank.

8. Ghale, Puran (2015): *Asymmetric power balance and its implications for regionalism in South Asia*, Submitted in partial fulfillment of the requirements for the degree of Master of Arts in Security Studies (Civil-Military Relations), Monterey, CA, USA.
9. Giri, Pratibha, Prithvi Karinje and Reeve Verma (2015): "A Study and Analysis of Challenges, Achievements and Hurdles Faced By SAARC Nations in Trade Integration and Growth", *International Journal of Engineering Technology, Management and Applied Sciences*, 3(1): 204-211.
10. Gokarn, Subir and Anuradha Sajjanhar (2014): 'Turning Water Challenges into Opportunities', in Vikram S. Mehta and W.P.S. Sidhu, (Eds.), *Reinvigorating SAARC India's Opportunities and Challenges*, New Delhi: Brookings India.
11. Gupta, Arvind (2011): 'South Asia in the Next Decade: A Futuristic Perspective', in Smruti S Pattanaik (ed.), *South Asia: Envisioning a Regional Future*, New Delhi: Institute for Defence Studies & Analyses.
12. Iqbal, Muhammad Jamshed (2006): SAARC: Origin, Growth, Potential and Achievements, *Pakistan Journal of History & Culture*, XXVII(2): 127-140.
13. Karim, Mahin (2013): *The Future of South Asian Security Prospects for a Nontraditional Regional Security Architecture*, The National Bureau of Asian Research, NBR project report, Washington.
14. Kher, Priyanka (2012): *Political Economy of Regional Integration in South Asia*, Background Paper No. RVC 5, UNCTAD's project on "Development Oriented Integration in South Asia".

15. Lahiry, Sujit (2007): “SAARC: Old Dilemmas and Emerging Prospects”, *Journal of Peace Studies*, 14 (2).
16. Mehta, Vikram (2014): ‘From Energy Crisis to Energy Sufficiency?’, in Vikram S. Mehta and W.P.S. Sidhu, (Eds.), *Reinvigorating SAARC India’s Opportunities and Challenges*, New Delhi: Brookings India.
17. Narang, A.S (2006): “Indo-Pak Relations and SAARC: Retrospect and Prospect”, in Kulwant Kaur and Baljit S. Mann, (Eds.), *South Asia: Dynamics of Politics, Economy and Security*, New Delhi: Knowledge World.
18. Nayak, Nihar (2013): *Cooperative Security Framework for South Asia*, New Delhi: Institute for Defence Studies & Analyses.
19. Naz, F. (2014): “Water: a cause of power politics in South Asia”, *WIT Transactions on Ecology and the Environment*, 178: 101-109.
20. Pattanaik, Smruti S. (2006) “Making Sense of Regional Cooperation: SAARC at Twenty”, *Strategic Analysis*, 30(1): 139-160.
21. Rahman, Sultan Hafeez, Sridhar Khatri and Hans-Peter Brunner (2012): *Regional Integration and Economic Development in South Asia*, UK: Edward Elgar.
22. SAARC (2006). “SAARC Regional Multimodal Transport Study”, SAARC Secretariat, Kathmandu, June 2006.
23. Shaheen, Irum (2013): “South Asian Association for Regional Cooperation (SAARC): Its Role, Hurdles and Prospects”, *IOSR Journal Of Humanities And Social Science*, 15(6):1-09.
24. Sharma, Nidhi Lekha (2009): “India and Regional Integration in South Asia: Hope for Greater Asian

Cooperation”, *The Indian Journal of Political Science*, LXX (3).

25. World Bank (2009): Why is South Asia vulnerable to climate change? <http://go.worldbank.org/OJ4FWPUB10>.
26. Zahid Shahab Ahmed (2013): “Regionalism and Regional Security in South Asia- The role of SAARC” -Surrey, England: Ashgate Publishing Limited.

Constitution of the People's Republic of Bangladesh

*Dr. Shampa Dev**

Introduction

The Constitution is the most fundamental document that constitutes a state. The history of the nation, the political developments, religious and cultural values of the people are key factors that shape the patterns of constitutional governance in a nation. This essay traces the constitutional experiments made in Bangladesh, the youngest of South Asian states which was also the first country to propose the SAARC.

History

As is well known after the partition of the Indian subcontinent through the India Independence Act of 1947, India and Pakistan had to enact new constitutions for their respective sovereign states. While India formulated its constitution and brought it into effect on 26th January 1950, Pakistan could not complete the process as quickly. Early in the constitutional governance of Pakistan, discontent began surfacing in East Pakistan over perceived discrimination and undermining the cultural and linguistic traditions of Bengalis by West Pakistan through such policy decisions like “the pride of place given to Urdu, a language not even understood in East Pakistan.”¹ Mohammad Ali Jinnah, father of Pakistan announced in 1948 that Urdu would be the language of Pakistan and anyone who objected would be an enemy of Pakistan. But the Bengali-speaking people who prided in their linguistic culture and heritage resisted imposition of Urdu. Another provision that caused resentment in sections of East Pakistan was the

* Associate Professor, School of Law, Christ University, Bangalore.

¹ Sen S. C., *The Constitution of Bangladesh and a Short Constitutional History*, Law and Politics in Africa, Asia and Latin America, Vol. 7 No.3 (1974), pp. 257-273.

constitutional provision that required president of Pakistan to be a Muslim.²

It took nine years for the framing of the Constitution of Pakistan which finally came into force on March 23, 1956. One of the provisions incorporated in the Constitution was the principle of 'parity'. "The larger population of the Bengalis in East Pakistan was always a matter of apprehension for West Pakistanis. In order to combat this apprehension in the federal parliament, the existing four provinces of Pakistan were merged into one unit, making provisions for equal (parity) representation from East Pakistan and West Pakistan."³ This became an immediate bone of contention, as the population of West Pakistan was more than the population and East Pakistan. Meanwhile Iskander Mirza who succeeded Ghulam Mohammad as the Governor General insisted that he would grant assent to the new constitution of Pakistan on the condition that he be declared as the first president of Pakistan. Pending presidential assent, no elections were held to constitute the new parliament for the country. Finally when elections were scheduled in 1959, Mirza abrogated the Constitution and imposed martial law throughout Pakistan. General Ayub Khan was declared the Chief Martial Law Administrator. Iskander Mirza appointed Ayub Khan as prime minister along with others as cabinet ministers. Out of the twelve members in the Ayub Khan cabinet only four were given representation from East Pakistan. But soon in a twist of political intrigue, Ayub Khan suspecting Mirza of conspiracy to oust him declared himself President of Pakistan.

Ayub Khan appointed a Constitution Commission to inquire into the reasons for the failures of the parliamentary system of government and suggest recommendations. A new constitution, for

² Choudhury G W., "New" Pakistan's Constitution, 1973, Middle East Journal, Vol. 8, No. 1 (Winter 1974), pp. 10-18.

³ Ahmed Salahuddin, *Bangladesh: Past and Present*, New Delhi: A.P.H. Publishing Corporation, (2003) at page 145.

the second time since independence, came into force on June 7, 1962. It legitimised authoritarian rule by the President. Soon, in the western and eastern wings of Pakistan popular dissent began manifesting against the 1962 constitution and its execution. In East Pakistan, the Awami League led by Sheik Mujibur Rehman rejected the new Constitution, demanding greater autonomy and devolution of powers for the East Pakistan province. Mujibur Rehman announced a six-point formula in 1966, demanding greater autonomy to East Pakistan province with the following agenda.

1. Federal form of government.
2. Centre should have authority only on defence and foreign policies.
3. Fiscal arrangement guaranteeing revenues for East Pakistan's exclusive development. This demand in order to offset the grievance that foreign exchange earned out of tea and jute exports originating from East Pakistan were not utilized for the benefit of eastern province.
4. Power to the provinces to levy taxes, part of which could be reserved for federal expenses.
5. Autonomy to enter into trade agreements with foreign countries.
6. Establishment of military academy and naval headquarters in East Pakistan.

These demands expectedly were rejected by the Pakistan government. In the ensuing political and constitutional battle between east and west Pakistan, Mujibur Rehman was arrested and imprisoned. The deepening political crisis resulted in regime change leading to replacement of Ayub Khan by another military general Yahya Khan. In the national elections held in December 1970 to Pakistan National Assembly, the Awami League of East Pakistan swept the polling by winning a clear majority to form a national government. However, the military regime refused to

abide by the electoral outcome and allow the majority party, the Awami League to form government. Amidst serious political protests in East Pakistan led by Awami League and other parties, Yahya Khan imposed martial law. Resistance by people of East Pakistan was met with brutality and genocide of the Bengali speaking people of East Pakistan. This was an unprecedented development of mass repression and killing in post-colonial South Asia. About ten million fearful East Pakistanis escaped into neighbouring India as refugees. The Bengali resistance movement turned into secessionist struggle demanding complete independence from Pakistan. “The cry of free Bengal and freedom for Bangladesh was now the cry all over East Bengal.”⁴ On 7th March 1971, Mujibur Rehman addressed the people of Bangladesh for the liberation of Bengal, for emancipation and freedom. On March 26, 1971, the birth of Bangladesh was proclaimed by the Awami leadership.

The civil war between the Pakistan Army and Bengali *Mukti Bahini* (Freedom fighters) turned into a fullscale interstate war between Pakistan and India. The fourteen day war eventually led to defeat of Pakistan and its army surrendered to the Indian army on December 16, 1971. Birth of Bangladesh became a reality as Pakistan was dismembered and India recognised the new nation.

Constitution of Bangladesh: Early Phase

Given the above developments that led to the formation of Bangladesh, the elected members of East Pakistan in the elections that were held in 1970, set out on the task of framing the Constitution of Bangladesh. The Constitution Committee headed by Dr. Kamal Hossain, took immense pains to learn from the constitutional experiences from around the world and “crystallized them into a body of legal principles and provisions, worthy of a nation which earned independence by blood of the people.

⁴ Ibid; p. 259.

Naturally it turned out to be a legal document embodying the highest ideals of democracy, fundamental human rights and dignity, justice, people's welfare and rule of law.”⁵ Within a year the Constitution of Bangladesh was formally adopted and it came into effect on December 16, 1972.

The Preamble of the Constitution echoes the democratic aspirations of the people of Bangladesh, will of the people, their historic struggle for the liberation of Bengali nation to form an independent and sovereign republic of Bangladesh finds express mention in the preamble. Nationalism, socialism, democracy and secularism are the fundamental principles of the Constitution as these were the ideals that inspired the national liberation struggle. It pledges for a society free from exploitation that values fundamental freedoms, human rights, rule of law and justice, political, economic and social rights. It affirms that the Constitution is an embodiment of the people's will and therefore a it is a sacred duty to safeguard it, so that the people of Bangladesh, prosper in freedom and are able to make contributions towards international peace and co-operation. Such are the noble ideals with which Bangladesh began its political evolution as a free republic.

The Constitution of the People's Republic of Bangladesh (*Gana Prajatantri Bangladesh*) describes the State as a unitary republic. It defined the territory of Bangladesh that included the former East Pakistan and a few territories that were exchanged with India. It described the flag, the national anthem, declared Bengali as the national language. Unlike the other constitutions the Constitution of Bangladesh stipulates that a portrait of the Prime Minister shall be displayed in all government, semi government and autonomous

⁵ Alam Shah M, Member, Law Commission, Bangladesh, *43 Years of our Constitution*, 3rd November 2015, available at <http://www.thedailystar.net/law-our-rights/forty-three-years-our-constitution-166333> last accessed on 8th February 2016.

offices. It declared Dhaka as the capital of Bangladesh. Guaranteeing civil rights of citizens new constitution says State cannot make any laws that violates or abridge the fundamental rights of citizens. Right to property was conferred though it met with some tough opposition that insisted that socialism required that state should have the right to acquire property with or without compensation, but it must only be for 'public purpose' and on 'payment of compensation.'⁶

A parliamentary form of government was adopted and elections to the parliament were based on adult franchise. An Election Commission was created to conduct free and fair elections in Bangladesh. Constitution provides for separation of powers between the three organs of the state. The Executive, Legislature and Judiciary are not allowed to transgress their powers and are to strictly keep within the limits prescribed by the Constitution. Article 70 mandates an elected Member of Parliament should vacate his seat, if he resigned or was expelled from party invited strong opposition⁷. The President of the republic appoints a Member of Parliament as Prime Minister who enjoys the support of the House. He also appoints other ministers as per the recommendations of the Prime Minister. The Prime Minister and the Ministers collectively form the Executive, and are responsible to the Parliament. The constitution also provides for public service commissions for ensuring efficient civil services.

Bangladesh constitution envisaged an independent judiciary that would serve as a guardian of the basic law of the country and ensure rule of law. Judiciary is given power of judicial review over executive and legislative decisions found contrary to constitutional mandate. Constitution amendment by way of addition, alteration, substitution or repeal of the provisions, can be done by securing

⁶ Huq Fazl Abul, *Constitution-Making in Bangladesh*, Pacific Affairs, Vol. 46 No. 1 (Spring 1973) pp. 59-76.

⁷ I bid at pg. 62.

the approval of two-thirds of the total number of members of the Parliament. Apart from the above features, the Constitution made provision for government spending, ordinance making power, establishment of administrative tribunals, the office of the Comptroller and Auditor General, government contracts and most importantly interpretation of the Constitution.

Constitutional Amendments

As of 2017 the Constitution of the People's Republic of Bangladesh has been amended sixteen times so far since its adoption. The political dynamics and regime changes in the country subjected its constitution to quick and periodic revisions, including attempts to replace the original constitution with new one. Following are the major constitutional amendments undertaken by successive governments.

First Amendment

Soon after the new Constitution was inaugurated certain changes were made to enable the trial of war crimes committed during the liberation war. Hence the first amendment to the Constitution was passed on 17th July 1973. During the liberation war of 1971, Bangladesh people suffered gross crimes against humanity which amounted to perpetration of genocide against the Bengali community of former East Pakistan, now Bangladesh. It was therefore politically imperative that these cases be tried separately and hence separate provision was inserted by way of Article 47(3). This provision provided for the prosecution, punishment and detention of war criminals whether they are "individuals, organizations, group of individuals" or members of armed forces, who were to be tried for offences like genocide or crimes against humanity and that such trials shall not be set aside for want of consistency with the Constitution. The first amendment also incorporated Article 47A in the Constitution according to which certain fundamental rights were denied to those liable for

prosecution under the above provisions. The rights that were proscribed for the war criminals include: right to the protection of the law; protection against *expost facto* laws; and the right to enforce fundamental rights. Pursuant to this amendment the Parliament passed International Criminal Tribunal Act for the trial of war criminals.

Second Amendment

Immediately thereafter the Constitution was amended for the second time on 22nd September 1973. The Constitution (Second Amendment) Act, 1973 incorporated following changes to the Constitution.

It introduced Part IX A – Emergency Provisions to the Constitution. This Part consists of Article 141A, 141B and 141C. Article 141A gives power to the President of Bangladesh to proclaim emergency where security or economic life is threatened because of war, internal disturbance or external aggression. Article 141B suspends Articles 36-40 and Article 42 while the emergency has been proclaimed. These Articles relate to fundamental rights including freedom of movement and the freedom to form association. Article 141C empowered the President to suspend the right to move the court for violations of certain fundamental rights that may be named in the proclamation. Other related changes are the following:

1. Article 26 invalidates laws inconsistent with fundamental rights was modified to exclude from its purview any amendment that is made to the Constitution itself. Accordingly Article 142 dealing with the power to amend Constitution was also modified.
2. Article 72 dealing with sessions of Parliament was amended to increase the interval between two sessions of Parliament to be 120 days instead of 60 days.

The Second Amendment invited serious public criticism. Manoranjan Dhar, who headed the Ministry of Law, Justice and Parliamentary Affairs, assured the people that all democratic constitutions provide for dealing with emergency situations or preventive detention. This amendment was merely meant to fill in the omissions. But the people of Bangladesh were skeptical and were not convinced.

Third Amendment

The Indira-Mujib Agreement was signed in 1974 to facilitate the exchange of enclaves belonging to Bangladesh but located in the Indian Territory and similarly enclaves of India located in Bangladesh territory. Constitution Third Amendment Act was passed on 28th November 1974 to give effect to that agreement.

Fourth Amendment

The Fourth Amendment to the Constitution that was passed on 25th January 1975 was the most controversial and most debated amendment in the history of Bangladesh. In the words of a constitutional scholar, 'It placed an authoritarian rule in place of a secularized democracy.'⁸ The backdrop of the fourth amendment needs to be examined to understand the drastic nature of this controversial amendment. The Mujibur Rehman led Awami League party that secured liberation for Bangladesh and thereafter formed the government was slowly losing its popularity. Within the ruling party factions developed leading to the formation of a new political party, Jatiyo Samajtantrik Dal (JSD). An intolerant government headed by the Awami League branded opposition groups and rival parties as anti-state, even accusing them to as foreign agents.⁹

⁸ Islam Morshedul Md, *The Politics behind the Passage of Fourth Amendment to the Constitution of the People's Republic of Bangladesh and its Provisions: A Modest Analysis*, Public Policy and Administration Research, Vol. 4, No. 9, 2014, pp. 55-66.

⁹ The Morning News, 13th September 1973.

Meanwhile Bangladesh faced severe floods. It caused heavy loss of life, damaged homes and caused loss of cattle. It received huge foreign aid but corruption in the administration prevented flood relief from reaching the needy people. Law and order situation had already worsened. Dacoity, looting of banks, murder was on the rise. Awami League's pro-India leanings invited public displeasure. The government banned the *Gana Kantha* and the *Azad*, newspapers that voiced the views of opposition parties. To quote an analyst: "Deteriorating law and order, too much pro-Indian policy of Awami League government, falling economy, unlimited corruption in government, smuggling, precarious suffering of flood victims, spiraling price of daily necessities alienated the Awami League government from the people."¹⁰ The government passed the Special Powers Act on 9th February 1974, by which it arrested the anti-government political leaders and groups. Resentment against government increased to such an extent that an All Party United Front was formed, which presented a 16-point programme to the government. Amongst these were "...repeal of 'black laws', bringing down prices, of all essentials, fight famine on war footing with all efforts, take effective measures for flood control, and denounce close ties with India etc."¹¹ Amidst worsening political situation and public agitation Awami League government reacted by imposing emergency on 28th December 1974 and suspended all fundamental rights. Subsequently, the Constitution Fourth Amendment Act was introduced in the Parliament on 25th January 1975, which was passed incorporating the following changes in the Constitution.

1. The Supreme Court's role as the guardian of the Constitution with the power for the enforcement of

¹⁰ Islam Morshedul Md, *The Politics behind the Passage of Fourth Amendment to the Constitution of the People's Republic of Bangladesh and its Provisions: A Modest Analysis*, Public Policy and Administration Research, Vol. 4, No. 9, 2014, pg. 56.

¹¹ Ibid at pg. 57.

fundamental rights was curtailed and was divested instead in a tribunal to be constituted by the government.

2. Chapter I of the Amendment provided for a strong Presidential form of government, mandating that the President would be elected by direct election. The President could be removed only on grounds of physical or mental incapacity.
3. The fourth amendment abolished existing office of the President. Article 48 (b) endorsed Sheikh Mujibur Rehman as the new President of the republic, with no popular mandate.
4. Chapter II that dealing with the Prime Minister and Council of Ministers was radically changed, providing for the Council of Ministers to aid and advise the President. It would be appointed from outside the Parliament and would hold office till the pleasure of the Parliament.
5. President was given the power to veto a bill placed before him for assent.
6. The original constitution required consultation with the Chief Justice for appointment of other judges of the Supreme Court. The fourth amendment did away with this requirement. The President was given a free hand to appoint additional judges to the High Courts. Under the fourth amendment the President could remove the judge on grounds of misbehavior or incapacity.
7. Another major change introduced by the fourth amendment was the formation of a National Party. Governance of the state would be taken care of only by this party. With its formation there would be no other political party. All the members of the Parliament were to join the National Party within a stipulated time. On failure to do so they would automatically vacate their seat in the Parliament. Sheikh Mujibur Rehman soon after formed the National Party.

Thus a representative government that the Awami League had itself gifted to the liberated people of Bangladesh was abandoned replacing it with an absolute presidency. By concentrating powers in the hands of President and by abolishing all parties except the newly formed National Party, the fourth constitutional amendment subverted democracy virtually in the newly born state of Bangladesh.

Fifth Amendment

In a coup staged by some army officers, Sheikh Mujibur Rehman along with his family members were assassinated on 15th August 1975. After a brief political stalemate parliamentary elections were held for the second time in 1979. Ziaur Rehman and his party won by two-third majority. The Constitution Fifth Amendment Act was passed on 6th April 1979,¹² incorporating the following major changes.

1. Part VIA abolished the one-party rule by National Party.
2. Independence of the judiciary that was given a fatal blow by the fourth amendment was partially reverted by amending Article 96 and Article 116.
3. The Supreme Court and the High Court were once again empowered to enforce fundamental rights and thereby act as guardians of the Constitution.
4. The veto power of the President over the bills passed by the Parliament was abolished.

¹² It may be noted that the Fifth Amendment was set aside as illegal by the Supreme Court of Bangladesh in 2010. Earlier in 2005 the High Court had also declared it illegal. However the words “*Bismillahir-ar-Rahman-ar-Rahim*” remained. Available at <http://www.thehindu.com/news/international/Bangladesh-SC-declares-illegal-amendment-allowing-religion-in-politics/article16811849.ece> last accessed on 10th February 2017.

5. Article 6 was amended mandating that citizens of Bangladesh would be referred as Bangladeshis, instead of Bengalis.
6. Article 142 was amended to include clause IA that secured certain provisions of the Constitution, by way of referendum, from arbitrary subsection to amendment.
7. Article 145A provided that international treaties should be submitted to the President who in turn must submit it to the Parliament.
8. The word 'socialism' was given a new meaning. It meant economic and social justice.
9. Article 58 provided that the President should appoint a person who commands the support of the House as the Prime Minister. At least four-fifth of the ministers should be appointed from amongst members of parliament.
10. The words 'historic war for national independence' replaced 'historic struggle for national liberation' in the Preamble.
11. The word 'secularism' in the Constitution was substituted with 'absolute trust and faith in the Almighty Allah. 'The words *'bismillah-ar-rahman-ar rahim'* was inserted at the opening lines of the Constitution.

Thus, the latest post-coup Fifth Amendment restored to a great extent fundamental provisions of the original constitution. Abolishing the single party system, enforcement of fundamental rights, restoring judicial independence, abolishing veto power of President and especially the introduction of a referendum for all important constitutional decisions were the much desired and welcoming changes. But the amendment did not change the term of office or the removal of the President from office. Similarly emergency provisions and preventive detention provisions remained giving the President added strength.

Sixth Amendment

Barely five years after the end of the Mujib era, on 30th May 1981 President Ziaur Rehman was assassinated in another army coup. The reins of the government were taken over by Justice Abdul Sattar, who was at that time serving as the Vice President. Article 123 of the Bangladesh Constitution required that where vacancy to the President's office arose due to the death of the President, it must be filled in within 180 days. A legal hurdle arose that since the Acting President was holding an office of profit he could not be nominated. The office of the President or the Acting President was not listed in the exempted office list. Hence the Sixth Constitutional Amendment Bill was passed in July 1981 which modified Articles 51 and 60 of the Constitution. It excluded from its purview the office of the President Vice-President and the Acting President. In the elections that followed Justice Abdul Sattar was nominated by the then ruling Bangladesh National Party and he won the elections with a thumping majority.

Seventh Amendment

But 128 days later, on 24th March 1982, Bangladesh witnessed another military coup led by Chief of Army Staff, Hussain Mohd. Ershad. He ousted the civilian leader Abdul Sattar, imposed martial law, dissolved the Parliament and suspended the Constitution. Martial law remained in force till 11th November 1986 and in an 'election' whose legality was highly questioned Ershad was declared elected as President. Once formal legitimacy was achieved, President Ershad claimed that "he had fulfilled his pledge to restore "democracy."¹³ The Seventh Constitutional Amendment Act was passed, legalizing the seizure of power and all the actions of the state in the above-mentioned period. They could not be called into question in any court. Apart from this the

¹³ Islam Serajul Syed, Bangladesh in 1986: Entering a New Phase, Asian survey, Vol. 27 No. 2, University of California Press.

seventh amendment raised the retirement age of the Supreme Court judges from 62 to 65.

Eighth Amendment

After Hussain Mohd. Ershad staged the military coup and issued a Proclamation to that effect, on 8th May 1982, he had issued another Proclamation amending the previous one and setting up 6 permanent High Court Benches at Chittagong, Sylhet, Rangpur, Jessore, Barishal and Comilla. The Bar Association of Dhaka and the Supreme Court staged a protest alleging that such decentralization was intended to destroy the judiciary. Hence they boycotted the courts and staged demonstrations. They boycotted the Court of the Chief Justice for almost three years, paralyzing thereby the country's judiciary. In another dramatic political development in November 1987, Ershad declared emergency, dissolved the Parliament and announced elections for March 1988. In the ensuing election Ershad's party majority of seats. The Eighth Constitutional Amendment Act that was introduced was passed in June 1988 with the following changes to the Constitution.

1. The word 'Bengali' in Article 3 was replaced by the word 'Bangla.'
2. 'Dacca' in Article 5 was replaced by the word 'Dhaka.'
3. Islam was declared as the state religion. Article 2A was inserted to that effect. It allowed the practice of other religions as long as it did not disturb peace in the society.

All opposition parties criticized and opposed the amendment for trying to divide the society on religious grounds. Even parties that were supporters of Islamic dogmatism saw it as an attempt to break the society on communal lines. It was only done to get the support of the illiterate masses that did not understand politics and governance but were religious, and could be moved in the name of

religion. This period saw widespread persecutions against the Hindus. Doubts were raised on the capacity of the Parliament to pass the Amendment Act, as the Parliament itself lost much of its legitimacy.

Ninth Amendment

The Constitution underwent yet another change on 11th July 1989, with the passing of the Ninth Constitutional Amendment Act. The significant changes that it introduced were: direct election of the Vice President; simultaneous election to the office of President and the Vice-President; fixing their tenure for a term of 5 years, and not more than two terms.

This amendment was of great significance then as it limited the office of the President and the Vice-President. It also restored the parliamentary form of government in Bangladesh. In the following year in 1990, another amendment, Constitution Tenth Amendment Act was enacted which renewed 30 parliamentary seats. Politically, Bangladesh was plunged into serious disturbances and protest movements against president Ershad's rule, finally leading to the president's resignation in December 1990.

Twelfth Amendment

The Twelfth Amendment is considered as the second most important milestone in the constitutional history of Bangladesh. Where the Fourth Amendment disrupted the original constitution, the Twelfth Amendment restored the fundamental tenets of parliamentary system of government. Under this, prime minister was made the executive head and the president titular head of state; president is elected indirectly by members of parliament; prime minister along with his ministers is accountable answerable to the parliament; most significantly, prime minister's counter signature is required for the proclamation of emergency and for suspension of fundamental rights by the President; people's participation was ensured at the local government bodies.

Fifteenth Amendment

The Bangladesh Parliament passed the Fifteenth Constitutional Amendment Act on 30th June 2011 which in effect added greater democratic substance to the restored parliamentary system by the twelfth amendment. Its major reforms include reserved seats for women in the parliament were increased to 50; Article 7 introduced tougher provisions to prevent dismissal of elected government by unconstitutional means; nationalism, secularism, democracy and socialism were reiterated as the pillars of the Bangladesh Constitution.

Sixteenth Amendment

With a view empower the parliament to impeach judges the Sixteenth Constitutional Amendment Act was passed unanimously on in September 2014. Article 96(2) provided that judges could be removed on grounds of proven misbehavior or incapacity. Article 96(3) stated that the Parliament by a law could regulate the subject matter. Immediately a writ petition was filed in the Supreme Court challenging this amendment. Meanwhile the government approved the draft of the 'The Supreme Court Judges (Investigation) Bill, 2016'. This Bill lays down the procedure to be followed for inquiry into the allegations and against the judges and their impeachment. Supreme Court subsequently declared the Sixteenth Amendment as ultra vires the Constitution holding that it violated the principle of separation of powers and transgressed judicial independence. The Court expressed its apprehension that, "if according to public perception, the judiciary is not independent, then it cannot be sustained at all."¹⁴ It may be noted that the original constitution had provisions relating to impeachment of judges, which were abrogated by the Fourth Amendment.

¹⁴ Available at: <http://archive.dhakatribune.com/bangladesh/2016/may/06/hc-rules-16th-amendment-illegal#sthash.7OkNXv7u.dpuf> last accessed on 7th February 2017.

Conclusion

Bangladesh has had the history of legislating and modifying Constitution as per the changing political dynamics. A saner view of the country's constitutional experience suggests that this youngest South Asian state had succeeded in firmly laying down certain democratic values which stood the test of turbulent times. Despite periodic, often violent attempts to overthrow the ruling democratic regimes and supplant them with authoritarian regimes and rulers lacking political support and constitutional legitimacy, Bangladesh civic society had over the few decades cultivated deep roots in liberal-democratic values and nurtured a vigilant society resistant enough to combat attempts to abrogate the constitution and undermine liberalism. The costs of protest movements were often heavy in human and material terms, but the dividends of democratic struggles are high and long-living.

Of course laws are a reflection of the society and the times that we are in, but all changes that are politically motivated may be blind to the real purpose of having a Constitution. The goals that the Constitution has articulated for the State; shapes and steers the State in the right path. If it becomes a plaything in the hands of the powerful then it would not be wrong to conclude that it wholly failed in its purpose. An effort to secure the sanctity of the Constitution must be made in the right earnest.

The Constitution of the Republic of Maldives, 2008

*Dr. K. Saibaba **

Introduction

The present Constitution of Maldives came into force on August 7, 2008. It is known as the ‘Constitution of the Republic of Maldives.’ According to this Constitution, “The Maldives is the Sovereign Independent Democratic Republic based on the principles of Islam and is a Unitary State.”¹The country has Presidential form of government.²

The present Constitution, which may be regarded as the Sixth Constitution, consists of a set of democratic rights, separation of powers and mechanism for accountability and transparency.³ All the powers of Maldives, according to Article 4 of the Constitution, “are derived from, and remain with, the citizens.” The Constitution paved the way for Maldives “first multi-party elections in Maldives.”⁴

Geographical Configuration of Maldives

The Maldivian Islands are situated close to the South Western tip of the Mainland India. It is an archipelago nation with 1192 islands, out of which about 200 islands are inhabited. The other

* Retired Principal & Head, Department of Political Science, V.V. (A/N) College, Jambagh, Hyderabad.

¹ The Constitution of the Republic of Maldives is in Dhivehi which is the national language of the Maldives. Ms. Dheena Hussain has done functional translation of this Constitution at the request of Ministry of Legal Reforms, Information and Arts. The author of this piece of work has taken the help of this functional translation in quoting and analyzing the Constitution of Maldives. The above quotation is from the Article 2 of the Constitution of Maldives.

² Anand Kumar, “*Multi-Party Democracy in the Maldives and the Emerging Security Environment in the Indian Ocean Region*,” (New Delhi, Pentagon Press, 2016), p.2.

³ *Ibid*; Page 13 (See also ‘Minivan News – Archive – A Short Constitutional History of the Maldives,’ December 22, 2013, p. 3),

⁴ *Ibid*; Page 13.

remaining islands are used either for tourism or agriculture. It is the smallest country in Asia in both land and population. Historically, it has been linked to the Indian subcontinent.⁵ It is at the north of the Equator and south west of the Indian Peninsular. This unique creation of nature forms 26 atolls, which for administrative purposes are made into 20 by the government. Male is the Capital of the Maldives. The tropical climate has made the country a tourist magnate.⁶ The population of Maldives, as of Wednesday, May 17, 2017 is 375, 078 based on the latest United Nations estimate. It is 0.01 per cent of the total world population.⁷

Maldivian Economy

The Maldivian economy is traditionally based on fisheries. However, during the past three centuries, the small Island nation developed tourism as an industry. This has brought some change in the Maldivian way of life. The main lifeline of the Maldivians depends on “sea, which supplies fish as food, sand and coral for housing the land for limited needs and the warm tropical underwater garden as a tourist attraction, which generates the much needed foreign currency.”⁸ Thus, the Maldivian economy is dominated by tourism and fishing. The World Bank classifies it as having ‘upper middle income economy.’⁹ The Unit of currency of the Maldives is the Rufiyaa divided into one hundred Lary.¹⁰

The origin of the first settlers in Maldives has no record. According to the historians, the early settlers were Aryan immigrants who came from India and Sri Lanka in 5th Century B.C. There was Hinduism on the Island in the early years and Buddhism entered later. However, the country converted to Islam

⁵ *Ibid*; p.2.

⁶ This is Maldives, <http://www.thisismaldives/country/themaldives.htm>.

⁷ [www.worldometers. Info 7 Maldives – Population.](http://www.worldometers.info/7-Maldives-Population)

⁸ *Supra* note 6.

⁹ *Supra* note 2, p.2.

¹⁰ Article 13 of the Maldives’ Constitution .

in 12th Century by the efforts of a Muslim scholar.¹¹ Since then, the Maldivians are Muslims and more so Sunni Muslims.

The unique geographical formation of Maldives has its impact on Maldivian culture which is rich with traditional dances and way of life.

The National flag of Maldives consists of white crescent in the Centre of a green rectangle surrounded by a red border.¹²

The Evolution of Constitutionalism in Maldives

For more than two centuries, Maldives was under the rule of the British,¹³ though it was governed by Sultanate System under the suzerainty of the British. It attained Independence on July 26, 1965 and became Republic on November 11, 1968.¹⁴ It became a member of the United Nations in 1965 and is one of the founding members of the South Asian Association for Regional Cooperation (SAARC) since its formation in 1985.¹⁵ It joined the Commonwealth of Nations in 1982 but left it in October, 2016.¹⁶

The Maldives has had several Constitutions and governments till the adoption of the present Constitution, 2008. It started its Constitutional process since 1930's. The credit of giving the people a democratic Constitution first goes to Sultan Mohammed Shamsudeen Iskander III who ruled Maldives from 1903 to 1934 and who is remembered as a remarkable ruler in the history of

¹¹ (According to the opinion of some, it was Shaikh Abdul Barakaath Yousuf Barubarer), *Supra* note 6.

¹² Article 12 of the Maldives' Constitution.

¹³ Before the rule of the British, Maldives was under the occupation of Portuguese for a short period of 15 years. Later, it became a protectorate first by the Dutch Rulers of Ceylon. In 1796, the British took over the control of Ceylon and Maldives became a British protectorate in 1887 and remained so till 1965 when the Islands gained Independence. (See, the Evolution of Political System (Maldives) – Chapter II – Shodhganga inflibnet.ac.in.>bitstream

¹⁴ See the above. Reference 'Preface' of the work.

¹⁵ *Supra* note 2, p. 1

¹⁶ Wikipedia, 'Membership of Commonwealth of Nations.'

Maldives as he himself decided to renounce his prerogatives and give a democratic Constitution.”¹⁷ This first written Constitution, which was codified on December 22, 1932, was the first semblance of representative government. It comprised 92 Articles and a Bill of Rights guaranteeing Equality before Law, Freedom of Arbitrary Arrest, Protection of Private Property, Freedom of Expression, Association and Press, etc.¹⁸ Though this Constitution could be regarded as the milestone, it failed within nine months of ratification.¹⁹

However, the growing demands of the people to meet the mainstream of democracy and its values led the rulers of the Maldives to make efforts to democratic values in Maldives. So, they brought some enactments in this regard from time to time. Their efforts led to the “Second Constitution in 1951, establishment of the First Republican government with the Third Constitution in 1953, the Fourth Constitution in 1954 and the establishment of Second Republic with the Fifth Constitution in 1968.”²⁰ The 1968 Constitution was made after Maldives became independent. All these Constitutions brought some improvements from time to time and strengthened the democratic process of Constitutionalism in the Maldives.²¹

¹⁷ *Supra* note 2, p.1

¹⁸ “A short Constitutional History of the Maldives,” Minivan News – Archive December 22, 2013 at <http://minivannews.com>

¹⁹ *Ibid*;

²⁰ Details in brief are in *supra*, note 2, Pp.7-13.

²¹ The First Constitution (1932) brought Bill of Rights. It was not adequate to meet the demands of the people who faced food insecurity. Many amendments were made for it, but they had failed. The Second Constitution (1951) reinstated freedom from arrest and provided some more freedoms. It handed the powers of the State to Monarchy. The Third Constitution (1953) abolished Monarchy and instituted a Republican Form of Government in Maldives. It established a Presidential Form of Government in Maldives. However, this first Republic was short lived. The Fourth Constitution (1954) declared Maldives to be an Elected Monarchy. Soon after Maldives achieved Independence from the British, the Fifth Constitution was adopted and Maldives became Republic second time.

Establishment of Constitutional Assembly: The 2008 Constitution

At present, Maldives is under the Sixth Constitution. It was ratified by President Mamoon Abdul Gayyoom in August, 2008.

Due to various events that took place in Maldives in 2003, Mamoon Abdul Gayyoom, who was elected for a record of sixth term as the President of Maldives, promised various political reforms. His first step was to institute a Human Rights Commission in 2003 to investigate the abuses of the political system and establish a Constitutional Assembly in May 2004 to draft a democratic Constitution.²²

The Constitutional Assembly – The people’s Special Majlis – consisted of 29 appointees, along with 42 elected members of the regular Majlis and a further 29 elected members.²³ Its Chairman was Mr. Ibrahim Ismail.

The Constitutional Assembly moved the process slowly. The members of rival parties were at loggerheads over several issues. They proposed the adoption of a Parliamentary system in the Maldives. But, the Constitutional Assembly referred this to public referendum in the Maldives in 2007. 60 per cent of the public voted for the Presidential system of government. Finally, the Constitution was adopted by the Constitutional Assembly. It was sent to the President Mamoon Abdul Gayyoom who ratified it on

After 18 years long process, the Fifth Constitution was amended for the fourth time. A number of reforms were made by this. This amendment was so significant that it was regarded *as the 1998 Constitution of Maldives*. However, this Constitution also could not continue for long due to antigovernment riots. Finally, the President Abdul Gayyoom had to go for Constitutional reforms. The result was the adoption of the 2008 Constitution which is the present Constitution and theme of this study. (Details – *Supra* note 2.

²² *Supra* note 2, p. 13.

²³ *Ibid*;

August 7, 2008. It came into effect immediately. This is known as “The Constitution of the Republic of Maldives, 2008.”

This Constitution has introduced a set of democratic rights, separation of powers and mechanism for accountability and transparency. It has statutorily demarcated the powers of Judiciary from those of the Head of the State. It paved the way for multi-party elections in Maldives.²⁴ According to Mohamed Ameen, “The most prominent feature in the Constitutional advancement in the Maldives is that it has constantly responded to the political, social, economic and cultural uniqueness covering inter relations involving the Islands and Atolls, Central administrative control, social stratification, an independent system of law and order, and has been conditioned to a greater degree by the religion of Islam, and as a corollary to all this by a homogeneous culture.”²⁵ The Constitution provides a legislature namely the People’s Majlis with the President who is the Chief Executive. There is an independent Judiciary where judicial power is exercised by the courts, as the Supreme Court is the court of last resort. There are various rights for the citizens along with responsibilities. The Constitution provides mechanism for transparency and accountability as it provides separation of powers, separate Independent Commissions such as Election Commission, Judicial Service Commission, Human Rights Commission, Anti-Corruption Commission, etc. In other words, the Constitution of Maldives, 2008 may be regarded as the landmark in the constitutional evolution of Maldives. Hence, it is necessary to explore various features of the Constitution of Maldives for a comprehensive study.

²⁴ “Transition to Multi-Party Democracy,” *Economic and Political Weekly*, 43(47), November 22-28, 2008, p.7.

²⁵ Dhivehi Raajyge Gaanoonu Asaaseege Hayath, Mohamed Ameen (See Hussain Nazeer (Noon), “*Salient Features of the Newly Drafted Constitution of Maldives*,” (Internet).

The Constitution of Maldives is in Dhivehi which is the national language of the Maldives. Ms. Dheena Hussain has translated it in English at the request of Ministry of Legal Reforms, Information of Arts and Republic of Maldives.²⁶ The author of this Article is thankful to Ms. Dheena Hussain for her authentic translation. In exploring the main features of the ‘Constitution of the Republic of Maldives,’ 2008, the author has taken the help of this translation done in English.

The present Constitution of Maldives, known as the Constitution of the Republic of Maldives, 2008, came into force on August 7, 2008. It has Fourteen Chapters, consisting of 301 Articles and Three Schedules.²⁷ Each Chapter and Schedule focuses on a specific topic. The following is the list of Chapters and Schedules (as per the Constitution, 2008) with their focus.

The Constitution of Maldives – An Overview

No. of Chapter	Articles From __ to __	Total Articles	Subject Matter
Chapter I	1 to 15	15	State, Sovereignty and Citizens
Chapter II	16 to 69	54	Fundamental Rights and Freedoms
Chapter III	70 to 105	36	The People’s Majlis
Chapter IV	106 to 128	23	The President

²⁶ Download Constitution (PDF), www.majlis.gov.mv/7.constitution-english.

²⁷ Since the ratification of the 2008 Constitution, there have been two Amendments to the Constitution. The first one related to Amendment of Article 109. It changed the age criterion for the election of the President to a minimum 30 years and maximum 65 years. The Second one related to Article 251 in regard to “allowing foreigners to own land in Maldives.’ This Amendment incorporated four more Articles with one more Chapter. This was made in July, 2015 (<http://the.wire.in>). “Maldives Amends Constitution to allow sale of Islands to Foreign Nationals – the WIRE, dated July 23, 2015).

Chapter V	129 to 140	12	The Cabinet of Ministers
Chapter VI	141 to 156	16	The Judiciary
Chapter VII	157 to 229	73	<p>Independent Commissions and Offices</p> <p>a. Judicial Service Commission. Article 157 to 166 = 10 Articles</p> <p>b. Election Commission Article 167 to 176 = 12 Articles</p> <p>c. Civil Service Commission Article 179 to 188 = 10 Articles</p> <p>d. Human Rights Commission Article 189 to 198 = 10 Articles</p> <p>e. Anti-Corruption Commission Article 199 to 208 = 10 Articles</p> <p>f. Auditor General Article 209 to 219 = 11 Articles</p> <p>g. Prosecutor General Article 220 to 229 = 10 Articles</p>
Chapter VIII	230 to 235	6	Decentralised Administration

Chapter IX	236 to 246	11	Security Services
Chapter X	247 to 252	6	Properties, Liabilities and Legal, Actions of the State
Chapter XI	253 to 260	8	State of Emergency
Chapter XII	261 to 267	7	Amendment of the Constitution
Chapter XIII	268 to 274	7	Application and Construction of the Constitution
Chapter XIV	275 to 301	27	Transitional Matters
Schedule I	Oaths of Offices		President – Vice President, Members of the People’s of Majlis, Chief Justice and Judges Members of Independent Commission and Independent Offices
Schedule 2	Administrative Divisions		
Schedule 3	National Flag		National Flag; Composition of National Flag; Dimensions and colours

Main Features of the Constitution of the Republic of Maldives, 2008

In the modern days, every State frames a Constitution. It “is a set of doctrine and practices that form the fundamental organizing principle of Political State. Its provisions usually specify how the government is to be organized, what rights it shall have, and what rights shall be retained by the people.”²⁸ A perusal of the

²⁸ Britannica Reference Encyclopedia, 2013, p. 165.

Constitution of the Republic of Maldives, 2008 may be drawn into the following features.

1. A written Constitution
2. Mainstay of the Constitution
3. Fundamental Rights and Freedoms
4. Responsibilities and Freedoms
5. An Islamic State
6. Presidential Form of Government
7. A Unitary State
8. Rule of Law
9. Separation of Powers
10. Judicial Review
11. Emergency Powers
12. Amendment of the Constitution
13. Universal Adult Suffrage
14. Decentralised Administration
15. Mechanism for good Governance

A Written Constitution

There are two types of Constitutions. They are: Written Constitution and Unwritten Constitution. A Written Constitution is one which has been deliberately formulated or enacted. The Constitutions of the U.S.A. and India are best examples for this. On the other hand, an Unwritten Constitution is based on customs and usages. The best examples for this is the British Constitution.

Till 1932, the Maldives had no Written Constitution. It followed customs and traditions along with Islamic Shari 'ah to form the law. The Islamic Scholars usually exercised much influence in the affairs of government. It was in 1932, a new Constitution was introduced in written form in Maldives.²⁹ Since then, the Maldives has been maintaining its Constitution in written form, though customs and traditions influence the political system still.

²⁹ This is Maldives.<http://www.this is Maldives.com>.

The present Constitution of the Republic of Maldives, 2008 was drafted by the Constitutional Assembly – The People’s Special Majlis. It came into force on August 7, 2008. It consists of 14 Chapters with 301 Articles and three Schedules.³⁰

Mainstay of the Constitution

Most of the Constitutions in the World including those of SAARC begin with a ‘Preamble’ which specifies the nature of the political system and objectives.³¹ However, the Constitution of the Republic of Maldives, 2008 has no Preamble. According to Dhivehi Observer, Maldives, “Ironically, our newly ratified Constitution does not have such a Preamble given the nature and spirit of the process of formulating the Constitution, what I can infer is that the members of the Special Majlis were not able to come up with the Preamble generally acceptable to the members.”³²

Even though the Constitution of Maldives does not specifically have a Preamble at the beginning of the Constitution, it has its ‘mainstay’ which mentions the nature of the State with aims and objectives in the very first Chapter entitled ‘State, Sovereignty and Citizens.’ According to Article 2 of the Constitution, “The Maldives is the Sovereign Independent Democratic Republic based on the principles of Islam and is a Unitary State. Article 4 says, “All the powers of the State are derived from, and remain with, the Citizens.” Article 5, 6 and 7 demarcates the powers of the State into legislative, executive and judicial and entrusts them to three organs of government namely the People’s Majlis (Legislature), President (Executive) and Courts (Judicial). Article 8 recognises the supremacy of the Constitution. Article 10 says that Maldives is

³⁰ For latest information, refer *Supra* note 27.

³¹ The Constitution of Singapore (1963) does not have a Preamble. Even the Constitution of the Republic of Italy (1948) does not have Preamble. (M.K. Pylee, “*Select Constitutions of the World*,” (New Delhi, Universal Law Publishing Co. Pvt. Ltd., 2002), Pages 6 & 7.

³² <http://doreview.blogspot.in/2008/08/non-preamble-no-self-determination-9422.html>.

an Islamic State. In this way, various Articles in the Chapter outline the objectives of the Constitution even without a Preamble.

Fundamental Rights and Freedoms

Chapter II of the Constitution of the Maldives entitled “Fundamental Rights and Freedoms” is very comprehensive enough to provide a long list of various rights and even duties to the citizens, as well as persons, of the State. It provides more than thirty rights and about ten duties. These rights, though not classified, cover *civil, political, economic, social, humanitarian, cultural, environmental and legal aspects*. The Constitution of Maldives does not contain ‘Directive Principles of State Policy’,³³ but it sets ‘certain duties’ to the State to protect various rights of the people which are positive in nature.

However, the Constitution prescribes certain limitations for all the rights. The most important limitations are mentioned in the first Article of the Chapter II (Article 16). It says, “The Constitution guarantees to all persons in a manner that is not contrary to any tenet of Islam.” The very Article empowers the people’s Majlis to enact any law to limit the freedoms, but such limitations should not be contrary to this Constitution and prove their justifiability of a democratic society. In other words, the people may have a number of rights, but the rights must be in accordance with the tenets of Islam. This Article also says that the nature and character of the freedom must be reviewed by the Courts to protect the tenets of Islam.

The various Articles of this Chapter mention a number of rights which are found in a democratic Constitution. However, enjoyment of these rights must be in accordance with the tenets of Islam

³³ The Constitutions of Maldives and Afghanistan do not contain Directive Principles of State Policy like those of other SAARC Countries. (Refer *Nepal Foreign Affairs: A Comparison of South Asian Constitutions* by Jivesh Jha), available at <http://nepalforeignaffairs.com/comparative-analysis-of-constitutions-in-south-asian-countries/>

which, it may be said, is the basic feature of the Constitution of Maldives.

The Articles enshrined in the Chapter II entitled “Fundamental Rights and Freedoms” are not specially categorized (as is done in the Constitution of India). However, this Chapter includes a number of rights which are civil, political, economic, social, humanitarian and environmental in nature. This Chapter covers “Responsibilities and Duties of Citizens” also. This is discussed in the next feature.

The following table helps one to have a look at these rights in a comprehensive way.

Fundamental Rights and Freedoms in the Constitution of Maldives, 2008: A Comprehensive View

S. No.	Article(s)	Name of the Right/Freedom	Main Content
1	17 and 18	Non-discrimination	No discrimination such as race, colour, sex, property etc. to enjoy rights and freedoms. Special assistance and protective discrimination to the disadvantaged groups. State has duty to protect these rights.
2.	19	Freedom from restraint	Free to engage any activity subject to law and Islam
3	20	Equality	Every Individual is equal before law with equal protection of law
4	21	Right to Life	Everyone has the right to life, liberty and security,

			subject to Article 16 of the Constitution
5	22	Protection of the Environment	State's duty to protect and preserve the natural environment, prevent pollution, etc.
6	23	Economic and Social Rights	Every citizen has various economic and social rights like good food, clean water, clothing, housing, health, communication, transport, electricity, etc.
7	24	Privacy	Everyone has the right of privacy in personal and family life
8	25	No slavery or forced labour	No person shall be held in slavery or required to perform forced labour. However, one has to accept compulsory Military service and emergency services required by the State.
9	26	Right to vote and run for Public Office	Every citizen above 18 years and above has the right to vote in elections, public referendum by secret ballot; run for public office and take part in public affairs.
10	27	Freedom of Expression	Everyone has the right to freedom of thought and expression subject to the

			tenets of Islam
11	28	Freedom of the Media	Everyone has the right to freedom of press and other means of communication
12	29	Freedom of acquiring and imparting knowledge	Everyone has freedom to acquire knowledge and information
13	30	Freedom to form political parties, associations and societies	Everyone has the right to establish and participate in the activities of political parties. He has the freedom to form associations – economic, social, education, etc.
14	31	Right to Strike	Every person, employed in Maldives, has the freedom to stop work and strike in protest.
15	32	Freedom of Assembly	Everyone has the freedom to assemble peacefully without prior permission of the State
16	33	Right to protect reputation and name	Everyone has the right to protect one's reputation and name
17	34	Right to marry and establishment of the family	Every person has right to marry as per law. Family entitles special protection. Protection to children in the event of marital breakdown of the parents.
18	35	Special protection to	Special protection and

		children, young, elderly and disadvantaged people	assistance to children and young people and elderly persons from all sorts of exploitation.
19	36	Right to education	Right to education without any discrimination. Free primary and secondary education. Opportunity for higher education. Inculcation of virtues of education.
20	37	Right to work	Every citizen has the right to engage in any employment. He is entitled fair conditions of work like equal remuneration, promotion, leisure and holidays.
21	38	Right to pension	The State shall provide right to pension to all engaged in employment.
22	39	Right to participate in cultural life	Everyone has the right to participate in cultural life. The State shall promote necessary conditions for this.
23	40	Right to acquire and hold property	Every citizen has the right to acquire, own, inherit and transfer property. However, for public good, State may compulsorily acquire property by paying

			reasonable compensation. Illegal property may be taken away by the State.
24	41	Freedom of Movement and Establishment	Every citizen has the right to travel within the Maldives and have residence in any inhabited Island of Maldives.
25.	42	Fair and Transparent hearings	Everyone is entitled to a fair and public hearing in all Judicial proceedings in the Maldives.
26.	43	Fair administrative action	Everyone has the right to administrative action that is lawful. Every person, whose rights are affected, can approach the Court.
27	44	Personal Liberty	The applications of the criminal law, investigations, etc. extend to the accused person only.
28	45	No unlawful arrest or detention	No arbitrary detention except as provided by law in accordance with Article 16 of the Constitution.
29	46	Power of arrest and detention	No person shall be arrested or detained without reasonable grounds.
30	47	Search and Seizure	No person shall be subject to search or seizure

			without a reasonable cause.
31	48 to 66	Rights on arrest or detention, Released of the accused, prompt investigation and prosecution, Rights of the accused, confessions and illegal evidence, assistance of legal counsel, No degrading treatment of torture, no imprisonment for non-fulfilment of contractual obligation, rights to appeal, humane treatment of arrested or detained persons, Compensation, Retrospective Legislation, prohibition of double Jeopardy, publication of acts and regulations, retention of other rights, violence of laws inconsistent with fundamental rights, non-compliance with unlawful orders, application of the court to obtain a remedy and violence of laws inconsistent with rights and freedoms	Various safeguards are provided for one who is arrested or detained

Thus, the Constitution of Maldives enshrines various rights which are termed as “Fundamental Rights and Freedoms” in the Chapter II of the Constitution.

The Constitution of Maldives has made the fundamental rights and freedoms justiciable. In the Article 68, it is said: “when interpreting or applying the rights and freedoms contained within this Chapter, a Court or tribunal shall promote the values that underline an open and democratic society, based on human dignity and equality and freedom.” It may be said that the Constitution has recognized the rights and freedoms as the basic value of the Constitution, in as much as the last Article namely Article 69 of this Chapter says ‘No provision of the Constitution shall interpreted or translated in a manner that would grant to the State or any group of person to perform any act at the destruction of the rights and freedoms set out in the Constitution.’”

Responsibilities and Duties

The Constitution of the Republic of Maldives, in the Chapter II entitled “Fundamental Rights and Freedoms,” sets certain ‘Responsibilities and Duties’ to every citizen. Article 67, which contains nine duties, says: “The exercise and enjoyment of fundamental rights and freedoms is inseparable from the performance of responsibilities and duties.” This Article entrusts to every person to stand by the following responsibilities.

- (a) to respect and protect the rights and freedoms of others;
- (b) to foster tolerance, mutual respect and friendship among all the people and groups;
- (c) to contribute to the well-being and advancement of the community;
- (d) to promote the sovereignty, unity, security, integrity and dignity of the Maldives;
- (e) to respect the Constitution and the rule of law;

- (f) to promote democratic values and practices in a manner that is not inconsistent with any tenet of Islam;
- (g) to preserve and protect the State, Religion of Islam, Culture, language and heritage of the country;
- (h) to preserve and protect the natural environment, biodiversity, resources and beauty of the country and to obtain from all forms of pollution and ecological degradation; and
- (i) to respect the national flag, State emblem and the national anthem.

An Islamic State

The Constitution of the Republic of Maldives declares that Maldives is based ‘on the Principles of Islam (Article 2).’ Various provisions of the Constitution clearly mention that Maldives is the Islamic State in letter and spirit. Article 9 says that “a non-Muslim may not become a citizen of Maldives.” Article 10 says: “The religion of the State of the Maldives is Islam. Islam shall be the one of the basis of all the laws of the Maldives.” It also says “No law contrary to any tenet of Islam shall be enacted in the Maldives.”

Even the Fundamental Rights and Freedoms, according to the Constitution of Maldives, shall not be contrary to any tenets of Islam (Article 16). A citizen cannot enjoy freedom that is prohibited by Islam (Article 19). Thus, the enjoyment of freedom of any manner is restricted on the basis of the principles of Islam. It is obvious that anyone who contests for the membership in Majlis or any executive, judicial and administrative posts should be a Muslim, particularly Sunni Muslim. One of the most important Articles is Article 142 which deals with “Compliance of law” in the Chapter VI “The Judiciary.” According to it, The Judges must consider Islamic Shar’ah when deciding matters on which the Constitution or the law is silent.” Even the law making body ‘The People’s Majlis’ “Shall not pass any law that contravenes the tenet

of Islam” (Article 70). According to Dr. Hussain Kettaini, who has done research in this field, identified the Maldives as a 100 per cent Muslim Nation.³⁴ The State Islamic Minister Mohamed Shaheem Ali Sayeed said that Maldives was a 100 per cent Muslim nation, according to the Constitution.³⁵

Thus, a study of various provisions of the Constitution of Maldives reveal the fact that Maldives is a Democratic State based on the principles of Islam.

Presidential Form of Government

The form of government in Maldives is Presidential to a greater extent, though there are few features of Parliamentary System. (The U.S.A. is the best example for the Presidential system. The U.K. is well-known for Parliamentary system).

Article 106 of the Constitution says that “the President is the Head of the State and the Head of the government and the Commander in Chief of the Armed Forces.” The Article also says that “the executive power is vested in the President as provided by the Constitution and law.” All this indicate that the President is the Chief Executive authority. This feature is also found in the American Constitution where the President is both the Head of the State and Head of the Government.

In Maldives, “there is a Cabinet of Ministers who are appointed by the President, with responsibilities for the duties and functions assigned to them by the President” (Article 129). This is a Presidential feature. But, the same Article says that “the President must receive the approval of the people’s Majlis for the appointment of the Cabinet.” This is not a feature in the conventional Presidential System.

³⁴ Minivan news.archive.

³⁵ *Ibid.*

Article 134 of the Constitution contains both Parliamentary and Presidential features. In a Presidential system, the members of the Cabinet are responsible to the President only, and not to the Parliament (whatever may be its name). In a Parliamentary system, the members of the Cabinet are individually and collectively responsible to Parliament. According to Article 134, "Members of the Cabinet are responsible individually and collectively to the President and also to people's Majlis. Thus, this Article contains both Presidential and Parliamentary features. Article 73 of the Constitution says that "a member of the people's Majlis should not continue to hold office as the Cabinet Minister, State Minister, etc. This is a Presidential feature. According to Article 101, "there is a vote of no confidence in a member of the Cabinet." According to this, the people's Majlis may remove a member of Cabinet by a motion of no confidence. This is a Parliamentary feature. However, it is by Article 137, "the President may at his discretion remove any member of the Cabinet from Office."

Thus, there are a few features of Parliamentary in nature in the Constitution of Maldives, even though it has basically formed a Presidential Executive with a Cabinet appointed by him to assist him in discharging his responsibilities and functions assigned to him by the Constitution. It may be regarded somewhat semi-presidential system. In the Cabinet, there is Vice President also (which is a novel feature), The Vice President cannot be removed by no confidence motion). In Maldives, there is no office of Prime Minister as is found in the Parliamentary system. Thus, the President is both Head of the State and Head of the government which is the most important feature of the Presidential system.

Hence, we may say that there is Presidential system in Maldives to a greater extent.

A Unitary State

According to Article 2 of the Constitution of Maldives, “The Maldives is a Unitary State.”

A Unitary State is one which has one system of government with all powers entrusted by the Constitution. There is uniformity in administration with single citizenship in the entire country. The U.K. and France are the best examples for this. In this system, there may be units of administration at the local level, but there are under the control of Central government. Such a government is generally suitable to small States.

Maldives is an archipelago nation with 1192 Islands which are situated close to South-Western tip of mainland India. There are only about 200 Islands which are inhabited. It is one of the World’s most geographically depressed country. It is the smallest in Asia both in land and population. More so, it is a homogeneous country with the Muslim population. Hence, a Unitary system is best suited to this.

The Capital of Maldives is Male. The Central government operates from here. The People’s Majlis is the law making body. The President is the top executive authority. The judicial power is vested in the Supreme Court, the High Courts and Tribal Courts. The Supreme Court is the highest authority of the administration of Justice in Maldives.

There is decentralized administration in Maldives. For the convenience of administration, there are many administrative divisions such as Constituencies, Posts, Island Councils, Atoll Councils and City Councils, etc. (Article 230). However, the entire administration at local level is under the Acts of Central authority. Article 233 of the Constitution says: - “A by law or decision of a local authority shall be subject to Acts or Regulation of the People’s Majlis.” Thus, it may be said that the local administration is under Central authority. Hence, Maldives is a Unitary State.

Rule of Law

The Rule of Law is a signal virtue of civilized societies.³⁶ The sweetness of democracy may be tasted by the recipe of rule of law.

The credit of evolving the concept of Rule of law goes to A.V. Dicey, an eminent British Jurist. According to him, Rule of Law stands for (i) absence of wide discretionary and arbitrary powers; (ii) Predominance of regular law; (iii) Equality before law and protection of rights and liberties of all under the law. According to him, 'No one is punished except for a distinct breach of law. Arbitrary arrests and punishments cannot be inflicted upon any one. All are equal before law and no one is above law.' In an Article entitled "Rule of Law in Maldives," an author says: "A fisherman and a Judge are not discriminated on due to their respective positions. People are not discriminated based on their political allegiances." The author also says that "anyone who takes the time to ponder on these points would revise of the rule of law been established in Maldives."³⁷

Rule of Law is the most ideal principle in democracy. Many democratic countries have enshrined most of the principles of Rule of Law in their Constitutions. However, how they are being applied in practice by any country including England depends on various interpretations. On these lines, one can expect the status of the application of rule of law in Maldives which has teething troubles in its process of Constitutionalism and Democracy. On October 6, 2016, Mr. Ahmed Sareer, Ambassador of the Republic of Maldives to United Nations, said, "The Maldives has underscored that nation is continuously working to foster a culture of respect for the rule of law by upholding the Constitutional

³⁶ Neil Mae Cormic, "*Rhetoric And the Rule of Law*" A Theory of Legal Reasoning, p. 13. (Taken from – Mustafa Haji, *Rule of Law in Islamic Republic of Pakistan and in India: A Comparative Analysis* , (M.K. Nambiyal SAARC LAW Review – Volume 1/ 2013, Nalsar, Hyderabad).

³⁷ Vnews.mv (21.08.2015).

segregation or the legislature, executive and judicial powers of the State, and ensuring all the safeguards necessary to prevent the arbitrary exercise of powers in a manner which is consistent with clear and comprehensive laws established through democratic process.”³⁸ He also reiterated that the rule of law is critical to a peaceful, stable and prosperous society and that it is fundamental at both national and international levels.³⁹

There are various provisions in the Constitution of Maldives which recognize the spirit of rule of law. Some of them are:

- (a) Everyone is entitled to the rights and freedoms without any discrimination such as race, colour, sex, age, property, etc. (Article 17).
- (b) Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law. (Article 20).
- (c) Everyone has the right to life, liberty and security. (Article 21).
- (d) Fair administrative action (Article 23).
- (e) Personal liability, No unlawful detention, Rights on arrest and detention, prompt investigation and prosecution, Humane treatment etc. (Article 25 to 65) Application to Court to obtain remedy.
- (f) Human Rights Commission (Article 189 to 198).

In this way, there are various safeguards for the individuals which maintain rule of law in Maldives. However, as found in other countries, the Head of the State, i.e. President has immunity and special protection and privileges which are specified in law. (Article 128).

³⁸ Maldivesmission.com.

³⁹ *Ibid.*

Separation of Powers

Separation of Powers is a concept propounded by Montesquieu. It greatly impressed the Constitution of the United States of America. The main thrust of this theory is to keep the legislative, executive and judicial branches of government distinct to prevent abuse of power and limit the government to be within its Constitutional limits.

The Maldives' Constitution has certain features which are required by Separation of Powers. Articles 5, 6 and 7 of the Constitution demarks the powers of government into legislative, executive and judicial. Article 5 says that all legislative power in Maldives is vested in the People's Majlis. Article 6 of the Constitution says "The executive power is vested in the President. The judicial power, according to Article 7, is vested in the Courts of Maldives. Thus, the new Constitution of Maldives, 2008 recognises the concept of Separation of Powers in the Constitution.

In this context, Hussain Nazeer points out that "the Separation of Powers devised by the framers of the Constitution was intended to do one object: to prevent the majority from ruling with an Iron fist. Based on their experience, the framers shield away from giving any division of new government too much of power. The Separation of Powers provides a system of shared power known as Checks and Balances. The premise behind it is that when a sole person or faction has a great amount of power, they can become dangerous citizens. The Separation of Powers is a method of removing the quantity of power in any group's hands, making it more difficult to abuse."⁴⁰

Thus, the framework of the Constitution provides the elements of the concept of theory of Separation of Powers, so that the liberties of the people be secured and no organ of the government could be

⁴⁰ Hussain Nazeer (Noon), *Salient Features of the Newly Drafted Constitution of the Maldives.*, (Internet).

dictatorial to an extent of defacing the spirit of democracy in Maldives.

Judicial Review

Judicial Review is the power of courts to declare the Laws of the Legislature or the Orders of the executive ‘void’ if they are against the Constitution. Justice Marshal of the U.S.A. is regarded as the Father of Judicial Review. This is the main feature of the American Constitution. In India also, the Courts exercise the power of Judicial Review.

The Constitution of Maldives does not expressly provide for Judicial Review. However, some provisions of the Constitution clearly express that the Courts in Maldives have the power of Judicial Review. Article 144 of Chapter VI (The Judiciary) says: “The Court’s may declare that any statute, regulation, order, decision or action of any person or body performing public function that is inconsistent with the Constitution is invalid to the extent of the inconsistency.” The main thrust of this Article is that the Court has the power to invalidate the acts of the executive and the legislature if they are against the Constitution.

Emergency of Powers

The Constitution of Maldives incorporates a separate Chapter entitled “State of Emergency” (Chapter XI) to empower the President to “declare a State of Emergency in all or part of the country” in the event of natural disaster, war, threat to national security or threatened foreign aggression. The period of this Emergency does not exceed thirty days unless the People’s Majlis approves for its extension. This declaration of Emergency shall be submitted to People’s Majlis within a specified period as prescribed by the Constitution.

During the operation of the period of Emergency, the Fundamental Rights and Freedoms of Chapter II (except – a few namely Right to

Life, Freedom of Expression, Fair and Transparent Hearing, etc.) are temporarily suspended. According to Article 256, the declaration of Emergency shall be published in the Government Gazette within three days of its issuance. The Supreme Court, according to Article 258, has the power to determine any issues with regard to the validity of the declaration of Emergency.

Amendment of the Constitution

Chapter XII entitled ‘Amendment of the Constitution’ (Article 261 to 267) deal with the procedure of the amendment of the Constitution of Maldives. A study of the procedure of the amendment shows that it is more or less rigid in nature.

Maldives is a Unitary State and it has only one Legislature at the Union level. It is unicameral in nature. In spite of this, the procedure of the Amendment is somewhat rigid in nature. The following are some highlights of the Amendment of the Constitution.

1. A Bill for Amendment must be passed by $\frac{3}{4}$ majority of the total membership of the People’s Majlis.
2. The Bill, so passed, shall come into force upon obtaining the written assent of the President.
3. Some provisions such as Fundamental Rights and Freedoms and Terms of Majlis and Term and election of the President require the decision of Public Referendum.
4. If the Bill, which requires Public Referendum, does not receive majority of public approval, shall be deemed to have been defeated.
5. No Amendment shall be made during the existence of State of Emergency.
6. There are certain limitations for the President in giving assent to the Bill sought for the Amendment of the Constitution.

Thus, a study of the procedure of the Amendment of the Constitution of Maldives has the following significant features.

- (a) Some Bills, proposed for the Amendment, require public referendum. This is a kind of direct democratic device.
- (b) The President has some limitations in assenting or not assenting the Bills of Constitutional Amendment.
- (c) The Bill of Constitutional Amendment requires 3/4th majority of the total membership of the House. This is rigid feature.

Universal Adult Suffrage

According to the Constitution of Maldives, ‘every citizen of the Maldives of eighteen years of age or older has the right to vote in elections, and in Public Referendum which shall be in secret ballot; and to run for public office.’ (Article 26). According to Article 17, “there is no discrimination of any kind including race, colour, sex, age and so on. By this, we can say that there is Universal Adult suffrage in Maldives.

Decentralised Administration

Chapter VIII entitled “Decentralised Administration” (Article 230 to 235) deals with various aspects of decentralized administration such as creation of local units, elections, responsibilities, legislation, finance, etc.

The President has the power to create the local units, namely Constituencies, Island Council, Atoll Councils, and city Councils etc. He allots Jurisdiction as per law. The members of the local units shall be democratically elected. The main responsibilities of the local units shall include democratic and accountable governance, foster social and economic well-being of the people and provide healthy environment, etc. The laws and decisions of local authority are subject to the Acts and Regulations of People’s Majlis.

Mechanism for Good Governance

The Constitution of Maldives, by its framework, stands for accountability and transparency. A number of provisions in the Constitution stand for these ideals which are required in any democracy. In this aspect, at first, one can go through Chapter VII entitled “Independent Commissions and Offices.” They are Judicial Service Commission, Human Rights Commission, Anti-Corruption Commission, Auditor General and Prosecution General. Even though these aspects are found in any democratic system, it is significant to note that the Maldives’ Constitution has accorded the title ‘Independent Commission and Office to them.’ By doing so, the Constitution has the entire administrative machinery of the State to be supervised by certain Commissions and Offices who are supposed to work independently ‘without fear and favour’ and strive for the streamline of the administration to provide good governance.

Conclusion

Thus, the Constitution of Maldives has a number of features. It is a democratic Constitution which has paved for multi-party elections first time in Maldives.

In spite of many noble features, the tiny democratic Republic has been facing many problems due to political upheavals, coups and derogation of the political institutions.

Hence, it is necessary to strengthen the Political Institutions on the lines of democracy. The State has to adopt modern democratic trends. It has to translate the ideals of the Constitution into reality.

Constitutional Development in Nepal with Special Reference to 2015 Constitution

*Prof. B. C. Upreti**

The constitution is a mechanism to draw the framework of political system and the form of governance. It is an essential prerequisite for the installation of a democratic political order and also for ensuring its successful working in a long term perspective. On the other hand, a democratic political system alone provides sufficient space for the implementation of a liberal constitution. Thus there is a close link between constitution and democracy¹. Both support and sustain each other. In fact a constitution is a prerequisite for the democratic governance, while a sustained democratic system may alone promote constitutionalism. It is difficult to assert that a constitution is a road to constitutionalism.² Constitutionalism is actually a process of sustenance of a constitution and the institutionalization of democracy on that basis in a long term perspective. In many countries constitutions becomes a mere formality in order to fulfill the minimum requisite of a democratic political order. Thus constitution and democracy are just made instruments to obtain legitimacy by the non- democratic power elite. The constitution naturally becomes ineffective once the democratic inputs become weak. It is obvious that such conditions would not support the growth of constitutionalism.

The South Asian countries though opted for a liberal western democratic system after the withdrawal of the colonial power, most of them could not keep pace with that.³ It also affected the process of constitutional development and constitutional sustenance. Nevertheless, there has been fervor for democracy in all the countries of the region. There has indeed been a resurgence of democracy in South Asia during the last one decade.⁴ It has

* Member, Prime Minister's Eminent Persons Group, Government of India and Former Director, South Asia Studies Centre, University of Rajasthan, Jaipur.

generated new hopes of constitutional development and democracy in the region. Nevertheless, there are several constraints and challenges that have been affecting constitutional and democratic system in the region.

Nepal is currently in the process of evolving a new constitutional mechanism at the moment. There are several issues and expectations. To what extent it would be possible to make the new constitution a true reflection of the popular expectations and aspirations is a big issue. The present paper is an attempt to understand the nature, dynamics and issues and challenges of constitutional development in Nepal.

Constitutional Development in South Asia

All the South Asian countries have now constitutional democracy, with Bhutan being the last to adopt a constitution.⁵ However, to what extent and in what way they reflect the philosophy of constitutionalism and have strengthened the process of democratization is a moot question. To what extent constitutions in South Asia have reflected the choices of the people, their rights and liberties and popular participation in political process is also an important issue. These matters are closely linked to the notions of stability and democracy that ultimately strengthen the process of constitutionalism.

In South Asia one may come across several models of the constitution. On the whole it can be said that except India, other South Asian countries have failed in attaining constitutional stability and continuity. In countries like Pakistan, Nepal and Bangladesh the authoritarian power elite have over-powered the constitutional framework. There have been constitutional distortions, suspensions and withdrawal in most of the countries in accordance with the change in regime. The blames for the failure of governments have often been laid on the constitutional

framework and therefore systemic shifts or changes in the constitution have occurred.

The distortions in the working of the constitutional system in these countries have occurred largely due to lack of commitment to democracy on the part of the ruling elite, irresponsible behaviour of the political parties, weak civil society and the people's apathy and frustration towards governmental order. It may again be emphasized here that a constitutional order is heavily dependent on the political elite, particularly where the popular participation in the democratic process is weak and there is lack of democratic traditions. Therefore, the issues that how and from where the elite are drawn in the politics is important. Except in India, where there is a strong background of national movement, which had indeed prepared a strong base for the rise of a broad based democratic political elite, in other countries of the region the political elite was characterized by self-perpetuating attitude, sectarianism, regional overtones, lack of inter-group linkages, manipulative approach and so on. It obviously has severe implications for the political institutionalization.

It can be said here that most of the South Asian states have lacked sufficient socio-political base for the growth of constitutionalism and the sustenance of democracy. The constitution has not been viewed as a vehicle for the institutionalization of democracy instead it has been used for legitimization of the political authority.

Nepal's Apprenticeship in Democracy and Constitutionalism

Since the foundation of the kingdom of Nepal in 1769 it was ruled by authoritarian rulers. The founders of the modern Nepal, the Shaha rulers established a highly centralized and absolutist rule. In 1846 the Ranas took away powers from the monarchy and became rulers of Nepal as Prime Ministers. The Ranas established a tyrannical rule in the country⁶. They also followed absolutism and a centralized and personalized power structure. Both the Shaha and

the Ranas did not allow any kind of social and economic reforms in the country. It remained a backward and underdeveloped state. The Rana rulers believed in continuous persecution of those who were opposed to their rulers. The Ranas also did not allow education to common Nepalese beyond a certain standard. Therefore many of the Nepalese send their children to India at places like Varanasi, Patna and Calcutta. It was the time when Indian National Movement was in its full swing and was committed to Swaraj. Many of the Nepalese living in India joined the Indian National Movement.⁷

Many of the Nepalese also became member of the Indian National Congress Party. Many were also impressed by the Socialist Movement. They gradually learned about democracy, the parliamentary system and also the capacity of the people to organize a movement against the authoritarian rule. These Nepalese also began to dream about democracy in Nepal. In 1948 the Nepalese living in India formed a political party. First it was named as Indian Nepali Congress but in its first convention in 1948 it was renamed as Nepal Congress Party. Another party of the Nepalese constituted in India was the Communist Party of Nepal.

The Nepali Congress Party decided to launch a nationwide movement against the Ranas. Many of the Indian leaders helped the Nepali leaders and later joined the movement. In 1950 the Nepali Congress started its movement. They demanded immediate abolition of the Rana rule and establishment of a democratic system based on the British parliamentary model. In a tripartite agreement in New Delhi in 1951 it was decided to establish democratic rule in Nepal under the leadership of the King in collaboration with the political parties. It was in this form that the democracy first came to Nepal. India played a crucial role in the apprenticeship of the Nepali political leaders in a democratic system of governance.

Constitutional Development in Nepal: 1948-2007

The constitutional history of Nepal began towards the end of the decade of forties in a highly fragile way. Actually the rising discontent of the Nepalese living in India and the strong possibilities of the withdrawal of the British colonial rule made the Ranas desperate to go for a constitutional system. A brief overview of these constitutions would give us an understanding of the nature and direction of constitutional development country.⁸

The Government of Nepal Act 1948

It was the first attempt by any Nepalese ruler to provide a constitution to the country. It was not expected of the authoritarian Rana rulers to introduce any political reforms. However, in the context of the growing discontent against their rule; the British withdrawal from the sub-continent on which the Ranas had relied much for support and the dawn of democracy in the South Asian region the Rana rulers considered it wise to follow a reformist approach. The Rana Prime Minister Padma Shumsher JBR who framed the government of Nepal Act viewed it as a scheme of political reforms.⁹

The above Act provided for fundamental rights such as freedom of person, speech, liberty, press, assembly, worship, equality. The executive powers were vested upon the Rana Prime Minister. There was a provision for council of ministers to assist the Rana Prime Minister in administrative works and to be appointed by him. The act also provided for a legislature divided into two parts: the panchayats and the central legislature consisting of two houses: Rashtra Sabha and Bhardar Sabha. Rastra Sabha consisted of 60-70 elected Panchayats and nominated members in the ration of 2:3. The Bahardar Sabha consisted of 20-30 members nominated by the Rana Prime minister.

The central legislature was a permanent body but one-fourth of the members were to retire every year. The bill passed by the

legislature was subject to their ratification by the Rana Prime Minister through his signatures. The Act also provided for a judicial system. The Act also made provisions for the universal free and compulsory elementary education, with an objective to liquidate illiteracy. A provision was also made in the Act for the formation of a public Service Commission. Rana Prime Minister Padma Shumsher abdicated before the Act could be promulgated and his successor Mohan Shumsher refused to implement it.

Interim Government of Nepal Act 1951

The Interim Government of Nepal Act 1951 came into operation after the withdrawal of the Rana rule. The interim constitution provided that the government will work for the improvement of the social conditions of its people, make effective provisions for securing right to work and education, to public assistance in cases of unemployment, old age, sickness and disablement and to improve living standard of the people in general and weaker sections of the society in particular. The constitution also provided for equal opportunity, rule of law, personal liberty and prohibition of trafficking in human beings, beggary and other forms of forced labour.

The executive powers were vested upon king. It provided for a council of ministers headed by a Prime Minister to assist the king and members of the cabinet were appointed by the king. King was also the supreme commander of the defense forces of Nepal. King had the sovereign power to make laws for the country. The cabinet could submit a bill for the consideration of the King, who could assent to the bill, hold it or return it. The constitution also provided for an Advisory Assembly consisting of the members nominated by the king. The Act also made provision for the constitution of an Election Commission entrusted with the task to prepare electoral rolls and hold elections at the earliest.

1959 Democratic Constitution

This Constitution was framed by a commission constituted by the king on March 16, 1958. The constitution was promulgated by King Mahendra on February 12, 1959. The 1959 constitution made provisions for a wide range of fundamental right to the people of Nepal in the spirit of a democratic constitution. These fundamental rights included personal liberty, equality, religion, and property, freedom of speech, assembly, association, residence and right to constitutional remedies. Executive powers were vested on His Majesty who would exercise powers through a council of ministers headed by the Prime Minister. There was also-provision for a Council of State consisting of President and Deputy President of Senate, Speaker and Deputy Speaker of the House of Representatives, minister and such other persons appointed by His Majesty. The functions of the Council of State were: proclamation of the accession of His Majesty's successor in accordance with the law, custom usage in Nepal and arrangements for Regency if king was a minor or unable to perform his duties.

The 1959 constitution also provided for a Parliament consisting of two houses: Senate and the House of Representatives. The Senate consisted of 36 members-18 elected by the House of Representatives and 18 nominated by His Majesty. The term of Senate was six years. The House of Representatives consisted of 109 members elected on the basis of universal adult suffrage. The House of Representatives did not have powers to discuss any issue relating to the conduct of His Majesty and also relating to the conduct of Chief Justice and other Judges of the Supreme Court. His Majesty had the powers in the constitution to declare emergency in the country in case of threat of war, internal aggression or a grave economic crisis. His Majesty would assume all powers in such a situation. He could also assume emergency powers in case of failure of constitutional machinery and suspend any provision of the constitution pertaining to part III, IV& V. His

Majesty could also suspend either or both houses of the parliament and himself assumed the law making powers.

Part VI of the constitution made provision for a Supreme Court headed by a Chief Justice appointed by the King in consultation with the Prime Minister. The constitution also vested upon His Majesty powers to enact, amend and repeal a law relating to the succession to the throne. He was also the Supreme Commander of the armed forces.

General elections were held in Nepal for the first time in February 1959 on the basis of this constitution. However, the newly installed parliamentary democracy was abrogated by King Mahendra in December, 1960 and the constitution was also withdrawn.¹⁰

The 1962 Panchayat

After the abrogation of the parliamentary democracy King Mahendra took over all powers in his hands and established his direct rule. He argued that the parliamentary democracy based on the western models of governance was not suitable to the Nepalese conditions and had proved to be a failure. He therefore began to search a 'third world model' of democracy suitable to Nepalese culture, history and traditions. He followed the footsteps of General Ayub Khan of Pakistan, Sukarno of Indonesia and Col. Nasser of Egypt and envisaged a new system of governance for Nepal called panchayat system.

The 1962 constitution maintained that the governance of the country in consonance with the popular will was only possible through a party less democratic panchayat system, which was rooted in Nepalese traditions. Hence it was stated to be an indigenous system.¹¹ The constitution defined Nepal as an independent, indivisible and monarchical Hindu kingdom.

The panchayat constitution made provisions regarding citizenship that every person who had his domicile in Nepal and:-

1. Who was born in Nepal; or
2. Either of whose parents was born in Nepal; or
3. Who as a women, had any kind of relation with a citizen of Nepal constituting matrimony in accordance with the laws and customs of Nepal; or
4. Who had already obtained a certificate of citizenship in accordance with the laws of Nepal; shall be a citizen of Nepal.

The constitution provided for fundamental duties and rights. The fundamental duties of the citizen of Nepal were stated as devotion and loyalty towards the Kingdom of Nepal; exercise one's rights with due regards to the law and without infringing upon the rights of others; to follow the system established under the constitution and to maintain social harmony. The fundamental rights prescribed in the constitution were: right to equality, right to freedom, right against exile, right against exploitation, right of religion, right of property and right to constitutional remedies. The constitution also prescribed a number of restrictions on the exercise of fundamental rights relating to national security, law and order, peace and harmony and prevention of internal or external disturbances.

The constitution vested sovereignty of Nepal in His Majesty and provided that all powers – executive, legislative and judicial emanate from him. The constitution provided for a council of ministers appointed by the His Majesty to aid and advises him in the execution of executive powers.

A four tier panchayat system was established. It included Village or town assembly and village or town panchayats, district panchayats, zonal panchayats and National Panchayat. Direct elections were held only at the lowest web of the panchayat hierarchy. The constitution also provided for a Raj Sabha, Supreme Court and other courts.

The 1962 constitution was amended thrice in 1967, 1975 and 1980. In 1967 the post of Prime Minister was created to head the council of ministers and the Back to the Village National Campaign was given a constitutional status. In 1975 amendment class organization system was introduced. Its objective was to promote popular welfare, social harmony and people's participation.¹² The 'Zone of Peace' Proposal was included in the constitution as one of the goals of foreign policy. The Prevention of Abuse of Authority Commission was also formed in this amendment. The 1980 amendment included appointment of the Prime Minister on the basis of the recommendation made by the National Panchayat, direct election to the National Panchayat on the basis of adult franchise and abolition of the Back to the Village National Campaign.¹³ The 1962 panchayat constitution remained effective till 1990 when the panchayat system was abrogated after a nationwide democratic movement. It was replaced by a multi-party democratic system.

The 1990 Democratic Constitution

The 1990 constitution envisaged for a constitutional monarchy in Nepal. It declared Nepal as a multiethnic, multilingual, democratic, independent, indivisible, sovereign, Hindu and constitutional monarchical Kingdom. The sovereignty was vested in the Nepalese people and exercised in accordance with the provisions of the constitution.¹⁴ The constitution provided for wide ranging fundamental rights to the Nepalese citizens viz right to equality, right to freedom, right to press and publication, right regarding criminal justice, right against preventive detention, right to information, right to religion, right against exploitation, right against exile, right to privacy and right to constitutional remedy. The constitution also narrated directive principles and policies of the state.

His Majesty the King of Nepal was regarded as the symbol of Nepalese nationality and the unity of the Nepalese people. He had

exclusive powers to enact, amend or repeal the law relating to the order of succession to the throne by the descendants of His Majesty. The constitution also made provision for a Raj Parishad. The executive powers were vested in His Majesty and the council of ministers headed by a Prime Minister. The leader of the majority party in the House of Representatives was appointed as Prime Minister by His Majesty.

The legislature consisted of two houses: House of Representatives and National Assembly. The National Assembly or upper house consisted of 60 members: 10 members nominated by His Majesty, 35 members (including at least three women) elected by the House of Representatives on the basis of proportional representation by means of single transferable vote, 15 members-3 each from five development regions elected by single transferable vote by an electoral college consisting of the Chief and the Deputy Chief of the village and town level local authorities and the Chief and the Deputy Chief and the members of the district level local authorities.

The House of Representatives consisted of 205 members elected on the basis of adult franchise. The constitution vested powers relating to justice in an independent judiciary consisting of Supreme Court, Appellate Court and District Courts. The constitution made provisions for a number of commissions such as Commission for the Investigation of Abuse of Authority, Public Service Commission, Election Commission, etc. All the political parties/organizations were required to register with the Election Commission. Any party based on religion, community, caste, tribe or region was not recognized by the Election Commission. Any political party contesting election to the House of Representatives was required to have at least five percent women candidates out of its total candidates contesting the election.¹⁵ The emergency powers vested on His Majesty. He was also the Supreme

Commander of the royal Nepal Army. The 1990 constitution was replaced by the interim Constitution of January 2007.

The Interim Constitution 2007

The basic objective of the interim constitution was to frame rules and regulations for the governance of the country till it was replaced by a permanent constitutional.¹⁶ The preamble of the interim constitution states thus “We the people of Nepal, in exercise the sovereign powers and state authority inherent in us”¹⁷. The sovereign authority is vested in the Nepalese people. The constitution has declared Nepal as an independent, indivisible, sovereign, secular, and inclusive and a fully democratic state. While Nepali is the official language all the languages spoken as the mother tongue in Nepal are the national language of Nepal.

Regarding citizenship the interim constitution states that the following persons who have their domicile in Nepal shall be deemed to be citizens of Nepal by decent:

- a. A, person who has acquired citizenship by decent before the commencement of this constitution.
- b. Any person whose father or mother is a citizen of Nepal at the birth of such person.
- c. Any person born till the end of mid April 1990 and has been permanently residing in Nepal shall acquire the citizenship of Nepal by birth as per the laws in force.

The interim constitution also provides for fundamental rights to the Nepalese citizens such as right to freedom, equality, right against untouchability and social discrimination, right regarding publication, broadcasting and press, right regarding environment and health, education and cultural right, right regarding employment and social security, right to property, right of women, right to social justice, right of child, right to religion, right to justice, right against preventive detention, right against torture, right to information, right to privacy, right against exploitation,

right regarding labour, right against exile and right to constitutional remedy. The formation of a Constituent Assembly on the basis of universal adult franchise was primary responsibility of the state.

The executive powers are vested in the council of ministers and executive functions of Nepal will be carried in the name of the government of Nepal. It was stipulated that the Prime Minister and the council of ministers shall be constituted on the basis of political consensus reached between Seven Party Alliance and NCP (Maoist) on November 8, 2006. The Prime Minister and the council of ministers are responsible to the Legislature-Parliament.

The interim constitution had also provided for a 330 member Legislature-Parliament consisting of 209 members of SPA and other parties who had elected members in the 1999 parliament: 73 members of NCP (Maoist) and 48 members from Samyukta Bam Morcha, intellectuals, professionals, etc. The membership of the Constituent Assembly was raised to 601 through an amendment with 240 members to be elected through First Past the Post System, 335 to be elect on the basis of proportional representation and 26 nominated from the civil society.

The constitution also provides for an independent judiciary, Commission for Investigation of Abuse of Authority, Public Service Commission, Election Commission and National Human Rights Commission. It also makes provisions for a National Defense Council. The emergency powers were also vested in the council of ministers and in case emergency is declared due to external or internal reasons it shall have to be placed before the Legislature-Parliament within one month.

It was essential for all the political parties to register themselves with the Election Commission. Any party, acting against the spirit of the preamble of the constitution will not be registered with the Election Commission. The Constituent Assembly was supposed to frame the new constitution in two years' time. It may be pointed

out here that Nepal's experience with constitutions has been highly fragmented and disappointing. Nepal has so far 6 constitutions but the constitutional development has not been uni-directional. Every time with the change of political system a new constitution came into operation.

What is most important in the context of constitutional development in Nepal is that the Rana Prime Minister in the case of 1948 Act and monarchy in case of other constitutions had been the source of constitution. All these constitutions were framed by the Constitution Making Committee appointed by the King. It was never framed by a Constitution Assembly. The sovereign power was vested with His Majesty. The only exception to these practices has been the interim constitution of 2007, which states that the sovereign power rests with the people of Nepal.

In all the past constitutions emergency powers rested with the monarchy and the monarchy had misused it in order to himself take over the powers on one pretext or the other. The democratic forces had very little role to play in the framing of the constitution. Even in 1990 the Constitution Making Committee was reframed after a strong resistance by the political parties. None of these constitutions offered scope for inclusive democracy.

On the whole it can be said that although Nepal had several constitutions in the past, they were neither based on popular sovereignty and popular will nor they strengthened democratic process in the country. The panchayat constitution which remained effective for 28 years promoted royal political supremacy and authoritarianism. One may say that despite constitutions a strong foundation of constitutionalism could not be laid down in Nepal. It is for this reason that after a more than half of a century's journey of constitution's Nepal was once again heading for a new constitution. But one may add here that after a long struggle the political circumstances are changed in Nepal to begin the process of framing a new constitution.

Prelude to the Framing of the New Constitution

The second people's movement of April, 2006 set the tone for framing of a new constitution in Nepal. It was agreed after the 2006 movement to shift to a republican system after the abrogation of the monarchy. Initially this was a demand raised by the Maoist insurgents.¹⁸ But after the royal takeover of early 2005 the other political parties also finally lost their faith on monarchy and they also endorsed the demand of the Maoists to shift to a republican state. There was a growing realization even among the leaders of the liberal political parties like Nepali Congress that the institution of monarchy was largely responsible for the failure of democracy in the country.

The Seven Party Alliance had already endorsed the shift-over to a new democratic model in the 2007 interim constitution. Three issues were important in the context of a shift to a new model: abolition of the age old institution of monarchy and a shift to a republican, secular and federal state based on inclusive democracy, election to a Constituent Assembly to frame a new constitution. These issues were important in setting the future course of political stability and democracy in the country.

The First Constituent Assembly

There is no doubt that there was an agreement among the political parties and groups over the issue of formation of the constituent Assembly, but the politics of compromises and bargaining and the lack of concerns over broad national issues resulted in delays and uncertainties. The electors to the Constituent Assembly were postponed for twice in 2007. The interim government under the leadership of the Nepali Congress remained indecisive over several issues. Elections for the Constituent Assembly finally took place on 10 April, 2008. As expected none of the political parties could gain majority in the Constituent Assembly, which was also to act as a Parliament for the interim period. The Communist Party of

Nepal (Maoist) emerged as the largest party in the Assembly with 240 seats CPN (M) under the leadership of Pushpa Kamal Dahal (Prachanda) formed the government in collaboration with other communist and regional parties. The Constituent Assembly was supposed to frame a new constitution in two years' time.

In its first meeting on 28th May 2008 the Constituent Assembly took its historic decision for the abolition of the monarchy and declared Nepal a democratic republican state. The principle of secularism was also endorsed. The Constituent Assembly stipulated to frame a constitution along with the framework accepted in the 2007 interim constitution as well as in the various agreements and understanding among the political parties from time to time.

Framework of the New Constitution

There had been a broader understanding in the constituent Assembly regarding the framework of the new constitution. The major issues were:

- (i) The constitution will be called constitution of Nepal 2067 BS.¹⁹
- (ii) Preamble as agreed in the concept paper states Nepal as people's competitive, Multiparty Democratic Proportional Representative system of Governance.
- (iii) Acceptance to the principles of civil liberties and human rights, universal adult franchise, freedom of press, universal adult franchise, periodic elections, competent, impartial and independent judiciary and the concept of the rule of law.
- (iv) Acceptance to multi-ethnic, multi-lingual, multi-religious and multi- cultural nation.
- (v) Democratic republican state
- (vi) Secular state
- (vii) Inclusive democracy

- (viii) Addressing the issues of dalits, minorities and other backward and under privileged groups.
- (ix) Empowerment of women.

The constitution making process though began soon after the formation of the Constituent Assembly; the political process did not support it, with the result that the Assembly could not finish its task within the stipulated time frame of two years. In mid-2010 its time was extended for a year and then again 6 month extension. The terms of the constituent Assembly was to finally expire on 30th November, 2011 on 29 November but it was once again extended to May 2012 and it has been stipulated that the new constitution will be promulgated between 21-27 May, 2012.

However, the government and the political parties could not develop a consensus on several issues and that left a situation of indecisiveness on many issues which were key to the framing of the new constitution.²⁰ The major political parties like Nepali Congress adopted a non-cooperative attitude. There were differences over the rehabilitation of the Maoist combatants. Above nineteen thousand Maoist combatants were living in the UNMIN supervised camps and the Maoist led government was under pressure to rehabilitate and integrate them. There was an impression all around that it was not possible to frame the constitution unless the peace process would reach to a logical conclusion.

The Prachanda government resigned after a conflict with the army chief over the issue of the integration of the Maoist combatants. The resignation of the Prachanda government also delayed the constitution making process. The political parties failed in reaching to any consensus over the issues of formation of a new government. The issue was brought to the constituent Assembly which also to act as Legislature Parliament. But it failed to seek majority of votes in favour of any candidate. It was only after more than 15 rounds of voting in Constituent Assembly that a new

prime minister could be elected and a new government could be formed. However, the governments lead by Madhav Nepal and Jhal Nath Khanal proved to be short lived. It was clear that the political parties were more interested in manipulating power and they hardly seemed to be interested in activating the constitution making process and building a consensus over broader issues incorporated in the constitution. The delays in the government formation obviously affected the constitution making process.

The internal dissensions among political parties and leadership clashes resulted in further delays in constitution making. The UCPN (M) which was the largest party and was aspiring to form a new government again was seriously infested with leadership conflicts. Baburam Bhattarai succeeded in taking over as the new Prime Minister in 2011. However, the Constituent Assembly remained ineffective over finalizing the constitution except to extend the time limit for the framing of the new constitution. But the pressure was mounting from various circles and it was being apprehended that the Constituent Assembly would not be able to frame the constitution. Therefore, it becomes imperative on the part of the Bhattarai government to take certain steps urgent.

The major political parties reached to a seven point deal on November 01, 2011. It was agreed to adopt a time bound calendar for the promulgation of the constitution. A Six Point Agreement was concluded between UCPN (M), IPN (UML) Nepali congress and Samyukta Loktantrik Madhesi Morcha on 29 November, 2011. It was agreed that the new constitution will be promulgated between 21-27 May 2012. The first integrated draft would be prepared by 13.27 February, 2012. The draft constitution would be endorsed by March 5, 2012. Public opinion would be sought between 20 April-20 May 2012. A Constitution Committee of CA and a Dispute Reselection Sub-committee under the constitution committee of the constituent Assembly were constituted. But the deadlock continued.

There were differences among the political parties over the extension in time period of the CA. The UCPN (M) wanted Six months extension while Nepali Congress and the CPN-UML wanted only three months extension. The Supreme Court directed the government to extend time period of Constituent Assembly for one last time. The alternatives suggested were either to go for a referendum or hold fresh elections of the Constituent Assembly. The Nepali Congress retreated once again that the drafting of the constitution was not possible until the peace process is complete. Actually the question of the Maoist combatant had been a major issue in the peace process since the beginning. There had been strong differences over the issue of their rehabilitation. After several discussions over the peace process regrouping of the Maoist combatants took place between 20 November-01 December, 2011. 16996 combatants attended the regrouping process. 9000 opted for integration into Nepal army, 7000 opted for voluntary retirement, while 06 opted for rehabilitation package. Thus 2600 combatants did not attend the camps. The Nepali Congress and some other parties were not much interested in it and they also did not agree to the Maoist formula of rehabilitation. The combatants who were declared disqualified by the UNMIN had formed an organization as Disqualified People's Liberation Army. It is also said that the UCPN (M) itself were not interested in the rehabilitation of their combatants and they wanted to remain them in the camps till the next elections are held. So the operational plan the Maoist combatants were neither clear nor there was any consensus among political parties over the whole question of rehabilitation.

There was also a debate over the form of governance in the new constitution. In a meeting of the Task Force all the political parties had agreed to recommend a mixed model with sharing of executive powers between a directly elected President and Prime Minister. The UCPN (M) had supported an executive president; while the

Nepali Congress was in favour of executive Prime Minister. It clearly shows that the major political parties were in a bargaining mood and the delay in the framing of the constitution had not been taken seriously.

The issue of inclusive democracy had become extremely significant in the new constitution. In fact, Nepal is gradually witnessing the intricacies of a plural society and the privileges to some communities and region were no more possible. It had been agreed that Nepal will go for a federal state structure in the new constitution. However, which of federalism would be taking shape in Nepal was still not clear.²¹ The Maoists for the first time raised the issue of dividing the country into 12 autonomous units represented by ethnic groups traditionally and specific regions. More or less the same formula for creating federations was being advocated since then. The important issue here is whether Nepal was going for an ethnic based federation or a region based federation or mix-up of both? Both the forms had its positive and negative dimensions. The people of Tarai had made it clear that they will not accept a divided Tarai. They have raised the slogan of 'One Desh One 'Madhesh'.

A positive dimension seems to be that the civil society had shown its concern over delays in finalizing the constitution.²² Lot of pressure was being generated to complete the task. Lot of input was being given by the intellectual forums and academicians, towards drafting the new constitution.

The Formation of the Second Constituent Assembly

The first Constituent Assembly was dissolved in May 2013 without completing its task and it was decided to hold elections for a new Constituent Assembly in November 2013. The hangover of the failure of the previous constituent assembly in framing the constitution loomed large in the performance of the different political parties in the elections. None of the political parties could

gain a majority. However, the CPN (Maoist), which was the largest party in the previous constituent assembly, was reduced to number four. The Nepali Congress emerged as the largest party in the house followed by the UML. However, the pattern of government formation, political fluids, inner party dissensions and problems in consensus building on major issues continued in the new assembly as well. The new Constituent Assembly was under pressure from all corners to complete the task of framing the constitution. The constitution was ultimately framed rather hardily and promulgated on 20 September 2015.

The 2015 Constitution

The new constitution was promulgated in a state of confusion and opposition from different quarters. The 2015 constitution is unique in many respects. It provides for a secular republican and federal democratic system in Nepal. The constitution runs into 35 parts and 308 articles. It has been claimed that the present constitution of Nepal is the foundation of democratization, peace and political stability in the country. The constitution carries following main characteristics:

The preamble of the constitution is quite comprehensive. It reflects upon the struggle of the Nepali people for the restoration of democracy and envisages for a brighter future of democracy in the country. It states “We the people of Nepal, in exercise of the sovereign powers inherent in us, embracing the sovereign rights of the people a and right to autonomy and self rule, by maintaining Nepal’s independence, sovereignty, geographical integrity , national unity, freedom and dignity. Remembering the glorious history of historical peoples’ movement and armed struggles time and again and the sacrifice made by people for national interest, democracy, progressive change, and recognizing the martyrs, the disappeared citizens and the victims.

Embracing multi caste, multi lingual, multi-cultural and diverse geographical specificities, by ending discriminations relating to class, caste, region, language, religion and gender discrimination including all forms of racial un touchability, in order to protect and promote unity in diversity, social and cultural solidarity tolerance and harmonious attitudes, we also express our determination to create an egalitarian society on the basis of the principles of proportional inclusion and participation, to ensure equitable economy, property and social justice.

Expressing commitment to create the bases of socialism by adopting democratic norms and values, including peoples' competitive multi party democratic governance system, civil liberty, fundamental rights, human rights, adult franchise, periodic elections, complete press freedom and an independent, impartial, and competent judiciary and the concept of rule of law. Now therefore, in order to fulfill the aspirations of perpetual peace, good governance, development and prosperity through the medium of federal democratic republican system of governance, hereby promulgate this constitution through the Constituent Assembly."

The latest constitution states that Nepal is an independent, indivisible, sovereign, secular, inclusive, democratic, socialism oriented federal democratic republican state. It further explains that 'secular' means protection of religion and culture being practiced in the country since ancient times and the religious and cultural freedom. Explaining the territory the constitution states that it means the territory of Nepal existing at the time of commencement of the constitution. It also includes "such other territory acquired after the commencement of this constitution".

The constitution of Nepal defines the national interest of Nepal as "independence, sovereignty, territorial integrity, nationality, autonomy, self-respect, protection of rights and interests of Nepali people, protection of national boundaries, and economic progress and prosperity, shall be the fundamental subjects of Nepal's

national interest.” The constitution provides a number of fundamental rights to the people of Nepal and also makes provision for the duties of the citizens. This part is most comprehensive and provides protection to the people in a number of ways. Some of the the important fundamental rights are as follows:

- 1- Right to live with dignity
- 2- Right to freedom
- 3- Right to equality
- 4- Right to justice
- 5- Right against preventive detention
- 6- Right against untouchability and discrimination
- 7- Right to property
- 8- Right to food

The following duties of the citizens of Nepal have been underlined in the constitution: Protect nationality, sovereignty and integrity of Nepal; Abide by the constitution and law; Compulsory enlists when the state needs the service; to protect and conserve public property.

The constitution provides detailed rules regarding citizenship as following:

- 1-There is a provision for a single federal citizenship with provincial identity.
- 2-to be a deemed citizen of Nepal it is required:

1-Persons who have acquired citizenship of Nepal at the commencement of this constitution and persons who are eligible to acquire citizenship pursuant to this part shall be deemed citizen of Nepal.

2-At the commencement of this constitution, the following persons who have their permanent domicile in Nepal shall be deemed citizen of Nepal by descent.

- a- A person who has acquired the citizenship of Nepal by descent before the commencement of this constitution. If a foreign woman married to a Nepali citizen so wishes, she may acquire naturalized citizenship of Nepal as provided for by the federal law.

In case of a person born to a Nepali woman citizen married to a foreign citizen, who has permanent domicile in Nepal and has not acquired citizenship of a foreign country, he/she may acquire naturalized citizenship of Nepal as provided for by the federal law.

Structure of the Government

The new constitution of Nepal for the first time provides for a federal system of governance by dividing the whole country into seven federations. In place of a unitary system the country now has a federal, democratic, republican system. The constitution provides for President as the head of the government, elected for a term of 5 years by an electoral college consisting of the federal parliament and the members of the provincial assembly on the basis of majority of votes. There is also a provision for the Vice President.

The Federal Executive: the constitution provides for a 'multi-party, competitive, federal, democratic republican parliamentary system'.

The President shall appoint the leader of the parliamentary party which has gained majority in the house as the Prime Minister and the Council of Ministers under the chairmanship of the Prime Minister. The constitution states that in case there is a coalition government the Prime Minister will have to seek vote of confidence in the house within 30 days. It is also mentioned that if a person who is not a member of the Parliament becomes member of Council of Ministers he will have to seek membership of the Parliament within 6 months time. All the executive powers are

vested on the Prime Minister and the Council of Ministers and they are collectively responsible to the Parliament for the execution of the powers.

The Federal Parliament

The Federal Parliament is consisted of two houses: House of Representatives and National Assembly, which is the upper house. The House of Representatives is consisted of 275 members out of whom 165 members are to be elected on the basis of the First-Past the Post System. One member each will be elected from a total of 165 constituencies. 110 members will be elected on the basis of the proportional representation system. In this system the whole country will be considered as a single constituency. The political parties taking part in the elections will declare a list of their candidates taking care of adequate representation to women, dalits, adibasis, janjati, khas, arya, madhesi, tharu, muslims, and backward classes. The voters will vote for the parties not to the candidates. The minimum age for voting is 18 years and the minimum age for filing nominations is 25 years. The term of the House of Representatives is 5 years. The term of the National Assembly is 6 years and the minimum age for nomination is 35 years.

Each province will have a provincial executive consisting of a provincial head that will act as the representative of the federal government and appointed by the President for a term of 5 years. The Provincial Council of Ministers will be elected by the Provincial Assembly. Each Province will have a unicameral Provincial Assembly whose members will be elected 60 per cent on the basis of First – Past the Post System and 40 per cent on the basis of Proportional Representation.

The constitution also provides for the local self governance consisting of Village Assembly, Town Assembly and District Assembly.

Issues and Challenges

There is no doubt that the 2015 constitution is quite comprehensive. Some of its provisions are much in details such as the fundamental rights. The constitution for the first defines d the Nepali state, the territory and the national interest of Nepal. The preamble of the constitution itself is quite impressive and has underlined the significance of Nepal's struggle for democracy.

The fact remains that the framing of the constitution was a complicated and long process that itself allowed a number of doubts and confusions to erupt. There were differences over the form of government and federal structure. The constitution was not accepted by the Madhesi community which challenged its following provisions:

- 1-Federal structure
- 2- Basis of representation in the parliament
- 3- Citizenship
- 4-Inclusive democracy

The people of Madhes have been arguing for one Madhes one Pradesh since the beginning. Later on they agreed to 2 or 3 divisions of Terai. They did not accept the idea of 7 provinces laid down in the constitution. Similarly they also pleaded for population as the basis of parliamentary constituencies. Now the main issue is federal provinces. Madhes has been on the path of agitations over this issue since the promulgation of the constitution. There has been an agreement on the part of all the governments since the promulgation of the constitution to introduce an amendment bill. But nothing has happened so far on the issue of federal provinces, although some other demands have been taken care of. The Nepal government has completed the local body's election despite threats of boycott from the Terai political parties. The election of the federal and provincial bodies is due in 2017 winters. Whether the government will be able to resolve the

issue of federal provinces and resolve the Madhes tangle is a moot question.

References:

1. G. Sartory, **the Theory of Democracy Revisited**, Chatham House publishers, Chatham, 1987; Larry Diamond et. al., *Democracy in Asia*, Boulder, Colorado, 1989.
2. Mohan Lal Sharma, "Political Elite, Democracy and Crisis of Governance in South Asia," in Mohan Lal Sharma, et. al. (eds.), *Globalization, Democracy and Governance in South Asia*, Kalinga Publications, New Delhi, 2003:35-56.
3. For some explanations see. B. C. Upreti, *Contemporary South Asia*, Kalinga Publications, New Delhi, 2004; 1-10.
4. B. C. Upreti, *Dynamics of Democracy in South Asia: Issues and Emerging Trends*, Visiting Faculty Lecture, Jadavpur University, Kolkata, 2010:1-32.
5. See for details, B. C. Upreti, Krishan Gopal, (eds), *Democracy in South Asia*, Kalinga Publication, Delhi, 2012:1-8.
6. Parmanand, *the Nepali Congress since its Inception* B.R. Publication Corporation, New Delhi, 1982.
7. Satish Kumar, *Rana Polity in Nepal: Origin and Growth*, Asia Publishing House, Bombay, 1967.
8. For details in this regard, see Bhuwan Lal Joshi and Leo E. Rose, *Democratic Innovations in Nepal, A Case of Political Acculturation*, California University Press, Berkeley, 1966; Anirudha Gupta, *Politics in Nepal 1950-60*, Kalinga Publications, New Delhi, 1993; Bhola Chatterji, *A Study of Recent Nepalese Politics*, The World Press, Calcutta, 1967; B.C. Upreti, *Nepali congress*, Kalinga Publications, New Delhi, 1994.
9. See Bhuwan Lal Joshi and Leo E. Rose, no.8.

10. See, Ram Kumar Dahal, Constitutional and Political Developments in Nepal, Ratna Pustak Bhandar, Kathmandu, 2001.
11. Rishikesh Shaha, Nepali Politics, Retrospect and Prospect, Oxford University Press, New Delhi 1978 “Changing Constitutional and Political System of Nepal”, Foreign Affairs Report, New Delhi, January, 1977.
12. The Rising Nepal, December 13, 1975.
13. The Rising Nepal, December 16, 1980.
14. See, ‘Preamble’, Text of the Constitution of the Kingdom of Nepal, 2047, HMG, Kathmandu, 1990.
15. Interim Constitution of Nepal 2063 (2007), Kathmandu, 2007.
16. See Lok Raj Baral, (ed), Nepal, Political Parties and Parliament, Adroit Publishers, Delhi, 2004.
17. For details see, B. C. Upreti, Maoist in Nepal, From Insurgency to Mainstream Politics, Kalpaz, New Delhi, 2008:27-72.
18. Draft, Constitution Committee, Singh Dubar, Kathmandu, 2010.
19. N.18.
20. B. C. Upreti, Nepal: Transition to Republican Democratic State, Kalpaz, New Delhi, 2009.
21. For various issues relating to the federal question see, Mahendra Lawati, Federating State Building, Challenges in Framing the New Constitution, Kolkata, 2010.
22. For civil society situation in Nepal see, B.C. Upreti, “Civil Society in Nepal” Indian Journal of Nepalese Studies, vol. xiv, 2008:24-37.

Tryst with Constituent Powers: Constitutional History and Future of Sri Lanka

*Lakshana R**

Introduction

It is said that a new Constitution signifies a break from the past in a socio-historic sense, as much as in a legal sense. India adopted a new Constitution after the historical experience of partition and independence. Arguably, we have not witnessed a break from the existing socio-legal order thereafter because we have not given ourselves a new Constitution despite the path-breaking National Emergency of 1975 and the Economic Liberalisation of 1991.

The political history of Sri Lanka has taken a different trajectory. The Island nation has given itself new Constitutions after every significant political change and it was only natural that an end of the Liberation Tigers of Tamil Eelam (LTTE) era would set the stage for yet another new Constitution. Towards the end of the LTTE war in 2009, Sri Lanka witnessed human rights violations that appalled the world. The incumbent Government realised that devolution of powers in favour of Tamils in the Northern and Eastern parts of Sri Lanka is the sole recourse to maintaining balance in the new legal order. The existing Unitary Presidential system in Sri Lanka provided no scope for decentralisation. Hence, the Island nation decided to give itself a new Constitution of moderated hopes. A Constitution that will balance the separatist tendencies of the Tamils against the centralising tendencies of the incumbency. Such a Constitution should ideally embody the dream of endless negotiations and processes but the ground reality in Sri Lanka speaks a different story.

Since 1994, there has been demands for a new Constitution with a more balanced power structure. The Tamil National Alliance

* IV Year, B.A. LL.B, NALSAR University of Law, Hyderabad.

(TNA) and the Sri Lanka Muslim Congress (SLMC) have been the most ardent fighters for a new Constitution since the existing legal order was notorious for its dismal minority protection regime. The Herculean task of drafting a new Constitution was shunned by many Governments on various pretexts. When Mahinda Rajapakshe came riding to power in 2005 on the wings of the eagle of constitutional change and legal revolution, he shouldered the hopes and expectations of many. But he hid behind the ensuing LTTE war and evaded the process of constitutional change which his successor has now boldly undertaken.

The power to draft a new Constitution, interestingly, stems from a provision of the existing Constitution of 1978. Article 75 provides that “Parliament shall have power to make laws, including laws having retrospective effect and repealing or amending any provision of the constitution or adding any provision to the constitution”. It is required that 2/3rd of the members of the Parliament adopt such a Constitution and that it be ratified by a simple majority at a publicly held referendum. Under the existing Constitution, the process to bring in a fundamental constitutional amendment is the same. However, Sri Lanka’s Constitution is relatively rigid and the process of amending the Constitution is not the best recourse when significant constitutional change is to be made. Hence, the exercise of re-drafting is the only recourse to bring in fundamental change in the socio-political climate in Sri Lanka.

The following section takes a brief excursion into the constitutional history of Sri Lanka and discusses the Island nation’s tryst with its constituent powers.

Constitutional History of Sri Lanka

This section traces the constitutional ventures of the Island nation from the pre-independence period till the second republican Constitution of 1978.

Pre-Independence Era

The first written Constitution adopted by Sri Lanka was embodied in the Ceylon (State Council) Order in Council of 1931 and it is commonly referred to as the Donoughmore Constitution. The background to the adoption of the Donoughmore Constitution can be understood by looking at political developments from 1833. The Colebrooke-Cameron reforms of 1833 first set the foundation for constitutional governance in the country by bringing significant changes to the then existing legal structure. The subsequent reforms - Crewe-McCullum Reforms of 1912, Manning Reforms of 1922 and the Manning-Devonshire Reforms of 1924- gradually introduced more progressive mechanisms for governance including the election of persons to the Legislative Council on the basis of communal identity. The local political leaders mobilized the masses in their fight against British rule and they were seeking extensive administrative reforms. The Donoughmore Commission was constituted in 1927 to examine the existing constitutional structure in Ceylon and to make recommendation for changes. In framing the Constitution, they were influenced by the committee system of the League of Nations and the London County Council administrative system. The Donoughmore Constitution of 1931 was birthed in this context. It ushered in three important changes.

First, the Commission suggested abolishment of communal electorates since it believed that it divided the society. Communal representation was originally intended to safeguard the interest of the minorities but the British felt that it created divisiveness in the socio-political life in the Island nation. Instead, territorial constituencies were introduced. The Tamils vehemently opposed this idea and they boycotted the initial elections under this Constitution.

Second, recommendations were also made to extend franchise to everyone who met the resident requirements. This move angered

the middle-class leaders who did not want to lose their privileged political position.

Third, suggestions were submitted to establish representative institutions like Executive Committee system, Cabinet and State Council or Assembly. The State Council was to comprise of territorially elected members and they were to exercise legislative and executive powers. The Assembly was also vested with financial powers but major executive decision-making in the realm of foreign affairs, public service, defence and justice delivery was left in the hands of three British officers who were to be nominated by the Governor. The State Council replaced the prior executive and legislative councils that had existed for almost a century. Further, the Governor had discretionary powers to veto the decision of the Assembly.

Constitution of 1946

The Ceylon Constitution Order in Council of 1946 revoked the Ceylon (State Council) Order in Council of 1931 and made provisions to establish a Westminster system of Parliamentary government. The executive framework comprised of a Prime Minister and Cabinet acting in the name of the King, a legislature consisting of the King, the House of Representative and the Governor who represented the king. The executive power was significantly shrunk by allowing the Governor discretion in several circumstances in which the constitutional head in a dominion, would generally have had to act on the advice of the Prime Minister. The Governor was not a true constitutional head and there were six significant restrictions on the powers of the Parliament.¹

1. The British Parliament retained the power to legislate for Sri Lanka;

¹ W.I. Jennings and H.W. Tambiah, *The Dominion Of Ceylon: The Development Of Its Laws And Constitutions* (1952).

2. The Sri Lankan legislature was not conferred extra-territorial powers;
3. The King in Council had authority under section 30(4) of 'the 1946 Order in Council to revoke, add to, suspend or amend' the 1946 Order in Council;
4. The King in Council had the power under section 30 (1) to make laws on defense and external affairs;
5. The Governor was required to reserve for the Royal assent bills dealing with defense, external affairs, currency and bank notes, the royal prerogative, minorities and constitutional amendments;
6. Under section 39, the Secretary of State had the right to disallow certain categories of bills after they had been assented to by the Governor if they affected the investments of the Government of Sri Lanka in the United Kingdom.

The Ceylon Constitution Order in Council 1946 came in the wake of demands made by the Sri Lankans for political independence in return for supporting the British in its Second World War victory. It failed to meet the expectations of any section of the Sri Lankan population and it was soon followed by three Orders in Council that birthed an independent Sri Lanka.

Ceylon Independence Act of 1947

The three Ceylon (Constitution) (Amendment) Orders in Council, all of 1947, and the Ceylon (Independence) Order in Council, 1947 led to independence from Britain, but the Island nation remained a Dominion of Britain. The principles enshrined in the Statute of Westminster were extended to Ceylon through the Ceylon Independence Act. Section 29(1) of the Ceylon (Constitution) Order in Council that conferred legislative powers was enlarged by the First Schedule to the Independence Act, which authorized the Ceylonese Parliament to repeal or amend a law made by the British Parliament for Ceylon. The Ceylonese Parliament was also vested with the power of extra-territorial legislation. Until 1972, the

British laws extended to Ceylon continued to be in force, unless repealed specifically. Section 4(2) of the Independence Act declared that Ceylon was no longer a colony. The Second Schedule to the Act provided for the inclusion of Ceylon as a dominion of Britain.

Soulbury Constitution 1947-72

The Soulbury Constitution derives its name from the Soulbury Commission that recommended it and it was created by way of a number of Orders in Council, Ordinances and Acts. Its judicial interpretation was significantly influenced by the constitutional framework of its former coloniser until the authoritative denouncement in *Liyanage v. The Queen*² wherein the fundamental differences between the Constitutions of the former colony and its coloniser were highlighted. The major differences are:

1. The Soulbury Constitution is primarily written while its British counterpart is unwritten.
2. Unlike the British Courts, the Ceylonese judiciary has been conferred the power to declare an Act of Parliament void.
3. Separation of powers existed to a greater degree under the Ceylonese Constitution.
4. The doctrine of sovereignty of Parliament was not borrowed from Britain.
5. There were no provisions to safeguard the freedoms of persons.

The Soulbury Constitution included several unique features in the system of governance. The Parliament was bicameral and it included the House of Representatives and the Senate. The Constitution did not provide for fundamental rights but it did prohibit the enactment of laws that discriminate against minorities. The public service was independent and the Privy Council was the final court of appeal.

² (1965) 68 NLR 73.

The Westminster model of Cabinet government was highly centralized and there was no room for devolution of power or any form of power sharing under the constitution. Sri Lanka was a multi-ethnic, multi-religious, multi-cultural country with a unitary structure but it had fairly stable democratic governments and a political system that respected democratic values during the period of the Soulbury constitution till 1972. During this period the demand for Federalism came up as a serious challenge from the Tamil speaking people of the North and East. Due to the relative stability that prevailed and adherence to values of Parliamentary democracy, the demand for federalism went unheeded. The democratic system of government under the Soulbury constitution witnessed free and fair elections.

The government of Sirimavo Bandaranaike that came to power in the Parliamentary election of 1970 promised to draft a new Republican constitution and to bring about a complete break from the British Crown. The Parliament elected in 1970 claiming to act under the mandate received from the people at the Parliamentary election, constituted itself as a Constituent Assembly under Dr Colvin R. De Silva and commenced the process of drafting the first autochthonous Sri Lankan constitution.

The constituent Assembly, though was comprised of the Members of Parliament elected at the Parliamentary election in 1970, did not function as Members of Parliament in drafting the constitution. It functioned as Members of the Constituent Assembly, mandated by the people through their sovereignty to draft a constitution for a Republic of Sri Lanka and it did not even sit in Parliament building to show symbolise its disconnect from the Parliament and the Soulbury constitution.

First Republican Constitution

The Soulbury Constitution was revoked completely and a new Constitution was adopted. Some significant features of the new

Constitution are that it was flexible and it established a National Government Council that was vested with the powers to amend the Constitution. Breaking away from the British crown, it described Sri Lanka as a free, sovereign and independent republic and recognized that it drew its authority from the sovereignty of the people. It created the office of the President. It introduced a constitutional court, supreme court and appeal court. It incorporated fundamental statements on government policies. It recognised the National State Assembly (NSA), as the supreme instrument of state power. It declared Sinhala as the official language and granted the foremost place to Buddhism while recognizing religious freedom. It recognised certain civil and political rights as fundamental rights in the constitution with no explicit remedy for their enforcement. It conferred upon the Cabinet of Ministers the powers of appointment, transfer, disciplinary control and dismissal of state officers and they were made responsible therefore to the NSA. Appointment of judges of the lower courts and of state officers administering justice was by the cabinet after receiving the advice of the Judicial Services Advisory Board.

Section 2 of the First Republican Constitution of 1972 specifically declared Sri Lanka to be a Unitary State. Earlier, under the Soulbury constitution Sri Lanka was in fact a Unitary State but it was not constitutionally declared so. The constitutional declaration shut the door for any compromise on devolution of power with the Tamil speaking people in the Northern and Eastern provinces, who were demanding federalism. It is in fact, significant that the Federal Party did not take part in the proceedings of the Constituent Assembly after the Assembly declined to discuss their demand for federalism. Therefore, the first Republican Constitution turned out to be highly centralized form of Parliamentary system of government on the Westminster model.

The important difference was that while Sri Lanka under the Soulbury constitution was subject to the supremacy of the Constitution under Section 29, the Republican Constitution declared that the sovereignty was in the people and that the sovereignty is inalienable. Section 2 of the Republic Constitution declared that peoples' sovereignty is expressed through NSA that is elected by the people. Section 5 declared that the NSA will exercise the legislative power of the people directly and that the President and the Cabinet of Ministers will exercise the executive power of the people, while the judicial power of the people will be exercised by Courts and other institutions created by the NSA.

Second republican constitution

After the change of government in 1977, constitutional reforms were mooted yet again. J.R. Jayawardene came to power defeating the Sirimavo Bandaranaike government by a massive 5/6 majority. To fulfil his promise of a presidential system of government, he enacted the Second Republican Constitution of 1978 was enacted. The 1978 constitution was proposed through a Parliamentary Select Committee without any consultation with the people and it was introduced in the NSA as an Urgent Bill. By declaring it as an Urgent Bill the pre enactment judicial review was limited for seven days and a challenged to the Bill in the Supreme Court was effectively precluded. This may be the first time in world constitutional history that a new constitution repealing an existing constitution has been enacted by way of an Urgent Bill.

The preamble declares that the fundamental premises on which the Constitution is grounded are the principles of equality, freedom, justice, human rights and the independence of judiciary which are an intangible heritage of the people. Article 3 provides that Sovereignty entails what has been described as the 'five building blocks' of the Constitution:

1. The legislative power of the people, to be exercised by the Parliament;
2. The executive power of the People, to be exercised by the President;
3. The judicial power of the People, to be exercised through Courts, tribunals and other designated institutions;
4. Fundamental rights;
5. Franchise.

Article 75 of the Constitution provides that the Parliament shall have the power to legislative retroactively and prospectively, creating, amending or deleting any constitutional provision. Further, article 84(1) reveals that the power to make laws includes the power to make laws inconsistent with the Constitution.

The Executive Presidency was the defining feature of this constitution and the President made all appointments to high posts. Presidential immunity from suit while in office and a broader chapter on fundamental rights with a judicial remedy were included in this constitution. The President was declared to be the Head of State, the Commanding Chief of Armed Forces, the Head of Government and the Head of the Cabinet. The Section on the unitary nature of the constitution was retained and the extent of powers conferred on President violated the norms of representative democracy.

There was no room for any form of devolution of power in this highly centralized unitary state with a strong President. The struggle for federalism was thus shifted from Parliament to direct struggle against the constitution in the Northern and Eastern parts of Sri Lanka. The Tamil youth took to arms and this development of the arms struggle was a matter that occupied the politics and constitutional making in Sri Lanka during the next 30 years.

Devolution Commitment through Article 13 Amendment

Devolution is the process by which governmental power or authority is given by a large centralized government to lower levels of governments, without relinquishment of the supremacy of the central legislature.³ Devolution can be legislative, administrative or both. The authority acting on delegated powers is not directly answerable to the Westminster Parliament at the Centre.⁴ In simple terms, devolution is a form of self-rule and shared-rule where power distribution can be done in two broad ways:

1. The Constitution provides the powers that would be vested with the Centre and leaves the residuary powers with the units.
2. Powers of the units are defined and the remainder vests upon the Centre.

Due to the armed struggle and demand for a separate state by the political parties representing Tamil speaking people of the North and East, in 1987 India directly intervened to bring about a settlement by devolution of power within an undivided country. The Tamil nationalist groups collectively articulated a set of four 'cardinal principles as the basis of a new constitutional settlement. They came to be known as the Thimpu Principles and they are recounted herein:

1. The recognition of Tamils of Sri Lanka as a distinct nationality;

³ See W. Blackstone, *Commentaries on the Laws of England*, a Facsimile of the First Edition of 1765-1769, Vol. I (1979); Wade & Bradley, *Constitutional and Administrative Law* 47 (11th ed., 1993); Harry Calvert, *An Introduction to British Constitutional Law* 45 (1985); Vernon Bogdanor, *Devolution* (1979); and L.B. Curzon, *A Dictionary of Law* 100 (1979, Macdonald & Evans).

⁴ O. HOOD PHILIPS & PAUL A. JACKSON, *CONSTITUTIONAL LAW AND ADMINISTRATIVE LAW* (1978).

2. The recognition of a Tamil traditional homeland in the North and East;
3. Based on the first two, the recognition of the inalienable right of self-determination of the Tamil nation; and
4. The recognition of the right to full citizenship and other fundamental democratic rights of all Tamils, who look upon the island as their country.

The Sri Lankan Government rejected the demands outright as a demand to negate the sovereignty and the territorial integrity of the Island nation. India continued its efforts at political resolution of the problem and its facilitative initiatives culminated in 1987 in the Indo-Lanka Agreement to Establish Peace and Normalcy in Sri Lanka.⁵ The Indo-Lanka Accord was signed by the then Heads of State: late Mr Rajiv Gandhi and Mr J.R. Jayewardene on the 29th, July 1987 in Colombo. The Accord entrusted upon the Indian Peace-Keeping Forces (IPKF) the responsibility of disarming the Tamil militants. The bilateral agreement led to the introduction of constitutional reforms in 1987 through the 13th amendment to the unitary constitution. The Provincial Councils Act 1987 was passed and a Provincial Council system was created in Sri Lanka by adding Chapter XVIII A to the Constitution. The new chapter contained provisions relating to Provinces in the Eighth Schedule and Ninth Schedule contained the Lists I, II and III. Since 1988, the Provincial Councils have established several administrative centres and two state services, i.e. a Central and Provincial Public Services, providing more regional autonomy. The devolution of legislative and executive power on nine Provincial Councils of Sri Lanka happened on the subjects set out in the 13th amendment.

These measures were an attempt to appease the sentiments of the Tamil speaking people of the North and East who were fighting for autonomy. Attempt to devolve power within a Unitary State was

⁵ [Indo-Lanka Accord].

unacceptable to the Tamil speaking people. The idea of Provincial Councils with vested legislative and executive powers under a Unitary State was found to be self-contradictory.

The 13th amendment and the Provincial Council Bills were sent to the Supreme Court to determine whether they were in conformity with the Constitution and whether a referendum was required.⁶ The 9 judge bench was divided five to four in declaring that the 13th amendment and the Bills did not violate the provisions in the constitution in respect of a Unitary State. The basis of the judgment was the view of the majority of judges that Parliament is supreme and that the 13th amendment does not violate the right of Parliament to legislate, if necessary, on all subjects, regardless of the relevant powers being vested in the Provincial Councils via the 13th Amendment.

Critics find it problematic that the Supreme Court chose to ignore the express mention of a 'referendum' in the Bills and ruled that a mere 2/3rd majority would suffice. The Supreme Court had also had opined that the Bills should follow the 13th Amendment, whereas, in reality the 13th Amendment was enacted two days after the First Bill. These procedural issues are not the only flaws in and around the 13th Amendment that is rife with problems.

The majority of the Sri Lankans perceived the 13th Amendment as a display of Indian supremacy. As per India's wishes, the Eelam was merged into one administrative unit falling under a single elected body by the Emergency Regulations of September 1988 proclaimed by the then President Jayewardene. This led to the birth of the North-Eastern Province with Trincomalee as the capital.

Those who were against Tamil separatism vehemently opposed the creation of the North-Eastern Province, which constituted one-fourth of the Sri Lankan territory. The Province was meant to be a

⁶ *In Re the Thirteenth Amendment to the Constitution and the Provincial Councils Bill* (1987) 2 SLR 312.

temporary measure and it was supposed to be subject to a referendum. But the President succumbed to political pressure and constantly re-issued proclamations to extend the life of the Province. The trigger point was the 1990 Unilateral Declaration of Independence (UDI) by the then Chief Minister Varatharajah Perumal. The Province was controlled from Colombo thereafter.

In 2006, fundamental rights petitions were filed by the hard-line Sinhala group Janatha Vimukthi Peramuna claiming that the merger of the North and the Eastern Provinces was illegal since neither was a referendum held and nor was the Provincial Councils Act amended accordingly. The Supreme Court de-merged the North-Eastern Province and noted that the wishes of the people have not been ascertained and the Emergency Regulation that was meant to be transitory is being successively re-promulgated. Further, the Apex Court invoked 'equal protection of laws' to affirm the right of the voters in the Eastern Council to elect their own representative. The Supreme Court contradicted itself when it refused to accept a petition from Triconmalee by saying that it seeks to consider the case only from the perspective of securing 'equal protection of laws' for all.

Ultranationalist Sinhala groups welcomed the de-merger of the North-Eastern Province.⁷ What they failed to realise was the devastating implications it would have for the then ongoing peace process. In retaliation, the LTTE butchered 130 soldiers at the crossing-point and assailed the Sri Lanka Navy killing 100 people. These incidents triggered a series of ruthless offensives from both sides that ultimately culminated in a bloodbath that saw the defeat of the LTTE in May 2009.

After the end of the LTTE war, the cry for repeal of the 13th Amendment grew louder. Several political organisations including

⁷ Muralidhar Reddy, *Divisive decision*, 23 (21) FRONTLINE (Oct 21st - Nov 3rd, 2006), Available at <http://www.frontline.in/static/html/fl2321/stories/20061103003002700.htm> (last visited Apr 3, 2017).

Jathika Sangha Sammelanaya, All Ceylon Buddhist Congress and the Collective for the abolition of Provincial Council systems (CAPCS) called for its abrogation on the ground that it was thrust upon Sri Lanka by outsiders. The 13th Amendment is back in the limelight as Sri Lanka is currently in the process of drafting a new Constitution.

Constitutional Discrimination of Minority Rights

Soulbury Constitution

Legislative power was vested in Parliament under Section 29 (2) of the Soulbury constitution of 1947. Section 29 read as follows:

“29(1) Subject to the provision of this order Parliament shall have power to make laws for peace, order and good government of the island.

(2) No such law shall –

(a) prohibit or restrict the free exercise of any religion; or

(b) make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable; or

(c) confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religions; or

(d) alter the constitution of any religions body except with the consent of the governing authority of that body:

Provided that, in any case where a religious body is incorporated by law, no such alterations shall be made except at the request of the governing authority of that body.

(3) Any law made in contravention of sub section (2) of this section shall, to the extent of such contravention, be void.

(4) In the exercise of its powers under this section, Parliament may amend or repeal any of the provisions of this Order, or of any other Order of His Majesty in Council in its application to the Island:

Provided that no Bill for the amendment or repeal of any of the provisions of the Order shall be presented for the Royal Assent unless it has endorsed on it a certificate under the hand of the Speaker that the number of votes cast in favour thereof in the House of Representatives amounted to not less than two-thirds of the whole number of members of the House (including those not present). Every certificate of the Speaker under this subsection shall be conclusive for all purposes and shall not be questioned in any court of law.”

The rationale behind Section 29 has been said to be the protection of the rights of both religious and ethnic minorities though reality indicates otherwise. For instance, Tamils of Indian Origin were deprived of their franchise by the Indian and Pakistani Citizenship Act of 1949 and by the amendment brought to Parliamentary elections Act they were deprived of right to vote during elections to Sri Lankan Parliament. When this blatantly discriminatory legislation was challenged in the Supreme Court, the Supreme Court held that Section 29 of the Soulbury Constitution did not bar Parliament in bringing in legislation to define who a citizen is. In another instance, the Parliament of Sri Lanka enacted the Official Languages Act of 1956, making Sinhala language the only official language of Sri Lanka. Though this was blatantly discriminatory to Tamils of Sri Lanka, they failed in their attempt to challenge the validity of the Act in the Supreme Court. Yet, the minorities continued to claim that Section 29 protects minority rights, for lack of a better provision in the Constitution.

The failure to get relief from the Supreme Court in these actions, strengthened the Tamil people's demand for federalism.

Second Republican Constitution Of 1978

Article 9 provides that “*the Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e).*” Article 10 guarantees the freedom of religion and article 19 secures the basic liberties of the citizenry. Sri Lanka is a melting pot of multiple identities and diverse cultures that practise various religions and hail from different regions of South Asia, largely, and the whole world, to a certain extent. It is immensely problematic to provide for the promotion of Buddhism in the constitution. Apart from being a threat to the minorities by disregarding their faiths, it is a disregard of the diversity of the Island nation.

The starting point of the constitutional discrimination can be located in the mid-1950s that saw the disgruntlement of the Sinhala population against Tamils, who, by virtue of their English-language training in the colonial era, cornered a chunk of government positions. In 1948, after Sri Lanka attained independence from British rule, the Sinhalese-majority government passed the Ceylon Citizenship Act (the country was called Ceylon at the time) which effectively made it nearly impossible for Tamils of Indian origin (also called plantation Tamils) to become citizens of the country. Then, in 1956, owing to pressure from hardline Sinhala groups, the Sinhala Only Act was passed, which replaced English with Sinhala as the official language of the government and failed to protect the position of Tamil. In 1970, Sirimao Bandaranaike, the first woman prime minister in the modern world, fought the elections on the promise of providing Ceylon its first true republican constitution. One of its key aspects would be the primacy it accorded to Buddhism and the mandate to the government to foster the religion. The country,

however, remained technically secular, in that it guaranteed its people the right to profess and practice the faith of their choice.

In 1978, when another new constitution was drafted, the clause giving primacy to Buddhism was retained even though the Sinhala-Tamil conflict was at its peak. This completely ignored the 1976 Vaddukoddai resolution drafted by father of the Tamil movement SJV Chelvanayakam, who declared that primacy to Buddhism made people of other faiths "second-class citizens".

Post-War Debate on Constitutional Changes

After end of the war in 2009, the necessity arose to look at the constitutional framework to see if it is possible even to a certain extent to satisfy the aspirations of the Tamil speaking people to enable a process on national reconciliation to be set in motion. This was neglected during the period of the end of war upto 2015. In the meantime, the 7 Provincial Councils which were dominated by Sinhala community became mere implementation agencies of the government due to the Executive Presidency being strengthened to create an all powerful Executive President.

On January 8th, 2015 President Maithripala Sirisena was elected to power supported by the United National Party of Prime Minister Ranil Wickramasinghe on an agreed programme. The essence of which was the democratization of the state by the repeal of the Executive Presidential system and reintroduction of Parliamentary democracy, where executive power resides on the Cabinet of Ministers responsible to Parliament, as it was before 1978.

The powerful Presidential system that was introduced in 1978 was further strengthened by the Rajapaksha regime in 2010 by adopting the now infamous 18th amendment to the constitution, whereby the President assumed more powers by doing away with Independent Commissions and taking it upon himself the power to make appointments to Supreme Court, Court of Appeal and all high officers. These powers were vested under the 17th amendment to

the constitution in 2001 (where an attempt was made to reform the Executive Presidential system by depriving the President of some of that highly controversial power). The power of appointment to Judges, Superior Courts and to Independent Commissions was vested under the 17th amendment in a Constitutional Council. The Constitutional Council was established to depoliticize the institutions of the state. The Speaker of Parliament was the Chairman of the Constitutional Council, with the Prime Minister and Leader of the Opposition been two other members. The Prime Minister and the Leader of the Opposition was to nominate by consensus five non-political eminent persons to the Constitutional Council and the President was entitle nominate one person while the other person was to be nominated by the smaller parties in Parliament.

This Constitutional Council went into crisis within a short period due to certain inherent defects in the 17th amendment itself and hence, Mahinda Rajapakse took upon himself the appointment of the Judges of Superior Courts and all other Independence Commission violating the provisions of the constitution.

After the January 8th verdict of the people the government of President Maithripala Sirisena with Ranil Wickramasinghe as Prime Minister brought in the 19th amendment to the constitution whereby as promised at the election. The powers of the President was curtailed to a large extend by taking away from the President the power of appointment of Judges of Superior Courts and Independent Commissions and officials to of high posts.

Though the 19th amendment has pruned down the powers of the President, what we have in Sri Lanka is still a Presidential system of government. The attempt by the new government to completely abolish the Presidential system failed due to the Parliament being, dominated at the time, of the introduction of the 19th amendment by Rajapakse loyalists. But the Parliamentary Election of August 2015 has changed this balance of power in favour of the present

government of President Maithripala Sirisena and Prime Minister Ranil Wickramasinghe and they command a two third majority in Parliament.

Therefore, the present attempt is to make a constitution that will satisfy all sections of the population by democratization of the state and bring about national reconciliation. Appeasement of minorities is crucial to this end. There is special focus on the place that shall be accorded to Buddhism in the new constitutional framework. So far, Sirisena has maintained that the position of Buddhism won't change in the new constitution.⁸ However, the interim report on the new constitution released on the 21st of September, 2017 has been censured as diluting the unitary character of the nation and relegating the political dominance of Theravada Buddhism.⁹ Devolution of power to the Northern and the Eastern regions where Tamils dominate, is being perceived as an unwise move that would aid Tamil secession.¹⁰

It is hoped that the widening of the chapter on Fundamental and Human Right and full implementation of the provisions of the 13th Amendment, will vest with the Provincial Councils legislative and executive power on subjects that can be dealt with at the provincial level, and it will go a long way in finding a truly lasting solution. Only time will tell when, if at all, there will be a solution.

⁸ Press Trust of India, *Buddhism's position in Lanka won't change: Sirisena*, THE HINDU, October 22, 2016.

⁹ Ana Pararajasingham, *Sri Lanka's Proposed Constitution Comes Under Attack*, THE DIPLOMAT, November 7, 2017, available at <https://thediplomat.com/2017/11/sri-lankas-proposed-constitution-comes-under-attack/>

¹⁰ Dayan Jayatilleka, *The Federalisation Plot: The Proof*, COLOMBO TELEGRAPH, October 28, 2017, available at <https://www.colombotelegraph.com/index.php/the-federalisation-plot-the-proof/>

Australia Observer Status in SAARC Conducive to South Asia's Peace and Prosperity

*Prof. Y. Yagama Reddy**

South Asia's Geographical Cohesion conducive to Regional Cooperation

The programme of South Asian regional cooperation was plausibly expected to benefit immensely from the historical and cultural ties connecting people across national borders, so much as to consider South Asia a 'single civilizational whole'. Efforts for regional cooperation in South Asia can also be traced back to 1945, when Jawaharlal Nehru made a plea for 'a South Asian Federation'. Regrettably, such an attempt made by India to develop regionalism beyond and outside the bipolar framework of the Cold War was, however, turned to be futile; it was simply the nonchalant attitude of South Asian nations towards regionalism. Ineptness of the geographical contiguity despite common land borders among the countries of peninsular South Asia and dearth of feeling of belonging to 'one civilization' and 'one region,' coupled with differential power-potentials have eventually led to the perpetuation of trust-deficit. For all the overt and covert constraints looming large, South Asia which portrays a region's geographical cohesion has begun to be professed as a 'geo-economic unit' becoming conducive to promoting regional cooperation and thereby regional economic integration.

SAARC typified by Inherent Strengths and Induced Limitations

Contiguity-prone Commonalities inducing Cooperation: South Asian Association for Regional Cooperation (SAARC) which came into existence in December 1985 was a logical response to

* Professor Emeritus, Centre for Southeast Asian & Pacific Studies, Sri Venkateswara University, Tirupati.

the much awaited need and effort, especially the persistent effort of a smaller state, Bangladesh. The organization of eight South Asian nations (besides the founder-members of Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka SAARC has Afghanistan as its eighth member joined in 2007) constitutes 3.44 per cent of the world's area, but accounts for 21.88 per cent of the global population (1.57 billion).¹ SAARC's geographical contiguity is complemented by cultural commonalities and common terrain, temperament, and civilisational space. As well as its relations sustained with several international/ intergovernmental / regional organizations,¹ SAARC has associated with a quite a good number of NGOs manifesting in Association of SAARC Speakers and Parliamentarians, SAARC Chamber of Commerce and Industry and SAARC Law. Gruesomely, the spirit of regional cooperation has been fractured by political detachment and poor political relationships thereof. Unlike the European Union, SAARC is not an association of nearly equally sized countries, given the fact that India geographically and economically accounts for 70 per cent of South Asia. Seven of them, except Afghanistan, have common borders with India but not each other, save the common border between Afghanistan and Pakistan. The imperative for development and economic growth is well attested by SAARC's dismal proportion of GDP (accounting for only 6.66 per cent of the world's GDP at PPP) accompanied by poverty, illiteracy, inequality, unemployment, low productivity and malnourishment (admin 2015).² Besides being the home of two-fifths of the world's poor, SAARC accounts for only 3 per cent of global output and 2 per cent of world exports.³

¹ Enrico D'Ambrogio, *The South Asian Association for Regional Cooperation (SAARC): At a Glance*, European Parliamentary Research Service, 2015. <http://www.europarl.europa.eu/thinktank> (accessed November 07, 2016).

² *SAARC and its Future*, February 20, 2015. <http://www.jayshreesengupta.org/indian-economy/saarc-and-its-future/> (accessed November 07, 2016).

³ Suhasini Haidar, "SAARC: Bursting with potential, burdened with disappointment," *The Hindu*, November 25, 2014.

Diminutive Complementarities inhibiting Cooperation: For all the well-expressed solidarity and appreciation of mutual traditions and cultures, SAARC has little or no complementarities among its member-nations which are endowed with similar skills and produce, besides discernible similarity in agricultural base and similar crop patterns. India's MFN with Pakistan has remained unilateral testifying to Pakistan's fear of India's preponderant economic power swamping its market; in a similar vein there was lack of political will among the member-countries as evident from the 18th summit of SAARC (held in Kathmandu Nepal in November 2014) that could sign only the energy agreement keeping the other two connectivity agreements (on road and rail) in abeyance. All along with multiple challenges inhibiting its functional performance, SAARC's regional cooperation has been hampered by limited resources for financing partnerships and investments in the region. The rhetoric that South Asia was a 'region without regionalism' has its relevance even after the 25 years of SAARC's existence, given the fact that as many as 14 Summits were deferred for various political reasons. Further, SAARC typifies a 'system of States', as opposed to the ASEAN's distinction of having evolved as a 'society of states.'⁴ Cooperation among SAARC member states seems to be a myth rather a mirage; and hence SAARC has been derided as "a marriage of convenience rather than love."⁵

SAARC's low and declining trend of Trade Intensity: It was in 1998 that the SAARC Group of Eminent Persons had charted an ambitious, three-stage road map for South Asia: a South Asia Free

⁴ Kripa Sridharan, 2008, "Regional Organizations and Conflict Management: Comparing ASEAN and SAARC," *Crisis States Research Centre-Working Paper Series*, no. 33 (March 2008), (London: Destin Development Studies Institute).

⁵ Wolfgang-Peter Zingel, "On the Economies of Regional Cooperation in South Asia," *15th European Conference on Modern South Asian Studies*, Prague, September 8-12, 1998.

Trade Area (SAFTA), followed by a Customs Union and a broader Economic Union by the year 2020.⁶ Repugnantly, SAARC has not become successful in enhancing intra-regional trade, nor in realizing economic integration of its members, as evident from the dismal performance of South Asia Preferential Trade Agreement (SAPTA) and SAFTA. Though signed in 1993 and came into force in 1995, SAPTA failed to take into account the diverse needs of each member state, and thus suffered from the limited trade coverage of preferential trade and insignificant trade concessions. Similarly, the benefits are insignificant for their growing economies through SAFTA which came into existence 2004 (aiming at the reduction of customs duties on all traded goods to zero by 2016), largely because of the protectionist attitude among members. Ali and Talukder lamented that the South Asian countries, being basically not natural trading partners, perform their trade mainly with non-Asian countries, especially with the European Union and the United States.”⁷ Exceptionally, the land-locked countries of Bhutan and Nepal have bulk of their trade carried out with their immediate South Asian neighbour, India. Except India, all other major SAARC countries like Bangladesh, Pakistan and Sri Lanka show a low and declining trend of trade intensity index, which was due to low trade complementarity among themselves as well as continuing barriers to intra-SAARC trade.⁸ As trade diversion has persisted as a common phenomenon in the South Asian Region, the intra-regional trade of SAARC could hardly ever cross the level of 5 per cent of member

⁶ Jayant Prasad, “Rebuilding a Regional Architecture,” *The Hindu*, November 24, 2014.

⁷ E. Ali and D.K. Talukder, “Preferential Trade among the SAARC Countries: Prospects and Challenges of Regional Integration in South Asia,” *Journal of Administration and Governance*, vol. 4, no. 1 (2009).

⁸ A. Bhalla, A. and P. Bhalla, “ASEAN and SAARC,” *RIS Digest*, vol.13, nos.2-4 (1996), 93-98.

countries' trade,⁹ as opposed to the intra-regional trade of EU (66%), NAFTA (53%) and ASEAN (25%).¹⁰

SAARC's Performance hinging on the Culture of Collectivism vis-à-vis Unilateralism

The reasons impinging on the SAARC's performance, among various others, have pointed to weak cultural identities, perpetual Indo-Pak conflict over unresolved border disputes, India's preponderant size of territory and economy, and SAARC charter mandating unanimity in all matters, besides lack of conscious-will in addressing essential political differences. Dr. Subramanian Swamy, chairman of the Bharatiya Janata Party's Strategic Affairs Committee, in his speech delivered at the Lalith Atulathmudali Memorial Lecture in Colombo in November 2014, lamented SAARC's "inability to devise instruments for consultations on bilateral and multilateral political and security problems" and hoped SAARC "to develop into a conflict-mediating or resolving institution on multilateral and bilateral issues."¹¹ Zahid Shahab Ahmed at the NUST Institute of Peace and Conflict Studies (NIPCONS), Pakistan, opines that the challenges of nation-building and consolidation of national sovereignty have undermined efforts at regional economic and security collaboration, as in the case of SAARC.¹² About the same time, the new provision in the Kathmandu Declaration (adopted at the 18th SAARC Summit on 26-27 November 2014) to hold the Summit once in every two years was feared that it could actually prolong it

⁹ Akanksha Khullar, "SAARC still marred by divisions," *East Asia Forum*, November 4, 2011. <http://www.eastasiaforum.org/?p=48235> (accessed March 14, 2013).

¹⁰ *Supra* note 3.

¹¹ Subramanian Swamy, "A case for SAARC reforms," *The Hindu*, November 25, 2014. <http://www.thehindu.com/opinion/lead/a-case-for-saarc-reforms/article6630591.ece> (accessed October 07, 2016).

¹² Zahid Shahab Ahmed, 2013, *Regionalism and Regional Security in South Asia: The Role of SAARC*, (London: Routledge), 242.

even further.¹³ SAARC, as Delinic pointed out, is “an alliance of contrasts and commonalities.”¹⁴ Debatably, SAARC activity is a rather modest and more extensive record of achievement; decisively, the SAARC nations in pursuit of accomplishing the task of regional integration need to cultivate the culture of collectivism and consultation, as opposed to unilateralism and centre-periphery syndrome.

SAARC’s Potentiality vindicated by External States-Interest to collaborate with SAARC

Dr. Christopher Snedden, of Deakin University, states that “the fact that SAARC has existed since 1985 is an achievement in itself.” Despite extremely difficult political circumstances, SAARC has managed to create situations, institutions and forums, and tackled important topics for the region such as a social charter, food and development banks, agreement on transportation, energy and fighting terrorism.¹⁵ The increased external interest in SAARC should be a pointer for South Asia to realize that the bodies created have more potential than the member states think themselves.¹⁶ A grand union, a dream of regionalists, is also expected to minimize the negative effect of mutual mistrust between countries, through the expansion of SAARC beyond its South Asian boundaries, incorporating Iran, China, South Korea and other countries. In the context of rising tide of globalization, an association or

¹³ “SAARC Process: Observers can play bigger roles as dialogue partners,” *The Himalayan Times*, December 11, 2014, available at <http://www.thehimalayantimes.com/fullNews.php?headline=SAARC+PROCESS%3A+Observers+can+play+bigger+roles+as++dialogue+partners&NewsID=436655> (accessed October 07, 2016).

¹⁴ Tomislav Delinić, *SAARC – 25 Years of Regional Integration in South Asia*, (Berlin: Konrad-Adenauer-Stiftung (KAS) International Reports 2/2011), 8. http://www.kas.de/wf/doc/kas_21870-544-2-30.pdf?110209123437 (accessed December 12, 2012).

¹⁵ “India and SAARC,” 2005, *Career Launcher*, April 04, 2015. <http://www.careerlauncher.com/civils/blog/india-and-saarc.html> (accessed October 10, 2016).

¹⁶ *Supra* note 14.

organization cannot aim for trade expansion and economic growth without the help of other nations. It is pertinent to quote Prof Gopalji Malviya, a strategic analyst at the Department of Defence and Strategic Studies, University of Madras, Chennai, who was cynical of the stigma of failure, in the context of many countries are seeking membership in SAARC.¹⁷ The signs of vibrancy and progress in the area of economic integration and trade promotion amply testified to the significant growth of SAARC especially from the dawn of 21 century, as vindicated by the interest and support of the Observer States for the regional grouping.

External States sought Observer Status: As has been the case with the international conferences, an observer represents a country or an organization at the conference or meeting of an international or regional organization for the purpose of watching its deliberations but does not participate in its decision-making process. There were many such instances as Association of Southeast Asian nations (ASEAN) and Shanghai Cooperation Organization (SCO) having several other countries as Sectoral Dialogue or Full Dialogue partners or Observers.¹⁸ In the face of the inherent limitations, the SAARC process has evolved with an increasing number of states seeking Observer status with the intention of associating with SAARC in collaborative endeavours. Many countries have started evincing keen interest in becoming SAARC Observers because the region is a huge market with great potential for investment.¹⁸ It was the improvement in prospects of development under SAARC that has attracted several non-regional states as Observers; and the bee-line of Observers at SAARC

¹⁷ Gopalji Malviya, "Building Bridges in SAARC: Hopes and Reality," paper presented at the International Seminar on SAARC: *Towards Greater Connectivity*, (Visakhapatnam: Centre for SAARC Studies, Andhra University, March 2-3, 2010).

¹⁸ Zahid Shahab Ahmed, "Expansion of SAARC: Opportunities and Challenges," *Foreign Policy Research Centre Journal* (focus on SAARC: Responses), No.4 (2014), 71.

summits presents both a challenge and an opportunity.¹⁹ The Heads of State or Government of SAARC at the 13th SAARC Summit (Dhaka, 12-13 November 2005) welcomed the requests by a number of countries and one intergovernmental organization to be associated with SAARC as Observers. China and Japan which were admitted as observer states during the 13th Summit participated along with the U.S., European Union and South Korea in the 14th Summit (New Delhi, 3-4 April 2007). The 14th SAARC Summit attached credence to the role of Observers with a note of optimism that “the region will benefit from these external linkages and help its economic integration with the international community.”²⁰ While appreciating the participation of the seven countries (China, European Union, Iran, Japan, Mauritius, South Korea and the U.S.), the 15th SAARC Summit (Colombo, 2-3 August 2008) also inducted Australia and Myanmar as Observers to SAARC. The 15th SAARC Summit which approved the guidelines for cooperation with Observers looked “forward to working with them in the common pursuit of the partnership for growth for (our) people.”²¹ All the nine Observers (Australia, China, European Union, Iran, Japan, Mauritius, Myanmar, South Korea and the U.S.) had participated in 16th SAARC Summit (Thimphu, 28-29 April 2010). As the member-states were committed to the continuation of moratorium on granting new observer status, the request of two other nations, Russia and

¹⁹ Rashid Ahmad Khan, “The Role of Observers in SAARC,” *Islamabad Policy Research Institute (IPRI) Journal*, vol. IX, no.2 (summer) (2009), 2.

²⁰ Anil Giri, “Observing the Observers,” *The Kathmandu Post* (SAARC Special); November 25, 2014. <http://kathmandupost.ekantipur.com/printedition/news/2014-11-25/observing-the-observers.html> (accessed September 08, 2016).

²¹ *Declaration Partnership for Growth for our People*, (Colombo: Fifteenth SAARC Summit, August 2-3, 2008). www.saarc-sec.org/.../Summit%20Declarations/15%20-%20Colombo%2015th%20Su... (accessed August 17, 2012).

Turkey, seeking observer status²² had been in abeyance at the subsequent 16th and 17th SAARC summits (28-29 April 2010 and Addu, 10-11 November 2011 respectively). Later, the Kathmandu Declaration adopted at the 18th SAARC Summit (Kathmandu, 26-27 November 2014) has called for engaging the Observers in “productive, demand-driven and objective project-based cooperation in priority areas as identified by the member states.”²³

China’s Ambition for Dialogue Partner: It was in the midst of China's push to elevate its role in SAARC from an observer to an active member that the SAARC-member-nations rather preferred to have "meaningful engagements" with all nine observer states. A majority of members, particularly Pakistan, Bangladesh, Sri Lanka and the Maldives which favoured greater interaction with the Observer nations have also supported a proposal to elevate China’s status to a dialogue partner citing the example of the Association of Southeast Asian Nations (ASEAN) grouping. But, India succeeded in persuading the other SAARC-member-states to place a five-year moratorium on raising status of China and other non-member observer countries to dialogue partners.²⁴ True, India fully disagreed with the idea of enhancing the role of observers; instead, as could be grasped from statement of MEA spokesperson Syed Akbaruddin, India drove home the point “to deepen cooperation within SAARC, (and) to enhance cooperation with observers, and increase interactions.”²⁵ “India’s smaller neighbours,” India’s

²² “Russia, Turkey seek observer status in SAARC,” February 16, 2014. <http://www.firstpost.com/fwire/russia-turkey-seek-observer-status-in-saarc-1392953.html> (accessed September 08, 2016).

²³ *Supra* note 13, also see S. D. Muni, *A Disappointing SAARC Summit*. <http://www.aljazeera.com/indepth/opinion/2014/11/disappointing-saarc-summit-2014112885157300755.html>.

²⁴ SAARC to review observer status only after five years,” February 09, 2015. <http://www.livemint.com/Politics/japiR4cqvcSW9HgIbxUuxO/Saarc-to-review-observer-status-only-after-five-years.html> (accessed October 07, 2016).

²⁵ Press Trust of India, “4 SAARC nations favour greater interaction with observers,” November 26, 2014.

strategic affairs analyst Raja Mohan observed, “want to see China play a larger role in the economic development of the region and take active part in the SAARC process... (while) Delhi’s own strategic instinct has been to limit the role of China.”²⁶ Expectedly, China’s state-run Xinhua news agency looked abashed by resenting the decision at the behest of India.²⁷ Understandably, the 18th SAARC Summit at Kathmandu, as summarized by Secretary General Arjun Bahadur Thapa, inclined to giving greater roles to Observers of SAARC process that could open new avenues for upgrading SAARC Observers to the status of Dialogue Partners.²⁸ Surendra Kumar has exhaustively dealt with the factors favouring China to become a full fledged member of SAARC vis-à-vis India’s position and concerns.²⁹

Observers’ expressed-intentions for Collaborative Endeavours

In spite of the Guidelines for Cooperation with Observers adopted at the Fifteenth SAARC Summit, there were several questions on incumbent Observer nations remained unresolved. Interestingly, Observer states outlined their future role in the SAARC in their brief speeches in the presence of heads of state or government. Observers like China, Japan, the US and Australia have begun making a number of proposals for mutually beneficial cooperation,^{III} some of which, according to SAARC official sources, are

http://articles.economictimes.indiatimes.com/2014-11-26/news/56490545_1_saarc-ministers-observers-18th-saarc-summit (accessed October 09, 2016).

²⁶ *Supra* note 20.

²⁷ Press Trust of India, “SAARC to have ‘meaningful engagements’ with 9 observer states,” November 24, 2014. http://articles.economictimes.indiatimes.com/2014-11-24/news/56420745_1_observer-member-states-foreign-affairs (accessed September 09, 2016).

²⁸ *Supra* note 13.

²⁹ S.Y. Surendra Kumar, “China’s SAARC Membership: The Debate”, *International Journal of China Studies*, vol. 6, no. 3 (December 2015), 299-311.

currently under implementation.³⁰ In pursuit of enhancing the international stature of SAARC, the contribution of the Observers is expected to provide connectivity and promote inter-regional trade and economic cooperation opportunities among the member states as well as to open up transit trade facilities.³¹ Even then, all the more substantive and serious dialogue with its observers is hinging on the strong ties among the SAARC member-states. With an apparent optimism over the 18th Summit (November 2014), Observers had their well-expressed intentions to involve in seven priority areas relating to agriculture, communication, energy, connectivity (road, rail, waterway and airway), environment, public health and economic cooperation. Though there had been pertinent proposals for opening up more horizons and avenues for the region, Observers had however been barred from cooperating or seeking dialogue in areas of security, tourism and politics. SAARC Secretariat viewed the proposal as “a huge opportunity for the Observers;” on the contrary, the Observers complained about “their limited role in the regional body.”³² Pending the expected recommendations for cooperation of the Observers in the enlisted seven fields, lack of unanimity among the SAARC-member-states over the presence of USA and China at the 18th Summit inhibited the Observers to play any active role. Inquisitively, European Union, Australia, China and Japan were prepared to extend cooperation to some projects, as opposed to lack of any initiation from Mauritius, Iran, South Korea, USA and Myanmar.³³

³⁰ *Cooperation with Observers*, 2009. <http://saarc-sec.org/cooperation-with-Observers/13/> (accessed October 22, 2016).

³¹ *Supra* note 19.

³² Anil Giri, “SAARC to embrace Observers more openly,” *The Kathmandu Post*, November 18, 2014. <http://kathmandupost.ekantipur.com/printedition/news/2014-11-18/saarc-to-embrace-observers-more-openly> (accessed November 09, 2016).

³³ “SAARC observers’ cooperation in seven fields, *banglanews24.com*, November 23, 2014. <http://www.banglanews24.com/national/article/31845/SAARC-observers-cooperation-in-seven-fields> (accessed October 25, 2016).

Australia's Observer Status-Implications

Stephen Smith MP, Minister for Foreign Affairs and Trade (2007-10), was pleased to announce Australia's induction as an Observer to the SAARC at the 15th SAARC Summit (Colombo, 2-3 August 2008).³⁴ Australia attended for the first time the 16th Summit (28-29 April 2010) at Thimphu in Bhutan; and has also participated in the subsequent SAARC summits held at Addu, Maldives on 10-11 November 2011 (17th Summit) and Kathmandu, Nepal on 26-27 November 2014 (18th Summit). As well as strong defence and counter-terrorism links with South Asia, Australia has its strong development cooperation relationships with regional development assistance in 2007-08 around \$A220 million, besides institutional links in key areas such as education, science and technology, and policy dialogues with South Asia. Furthermore, Stephen Smith underscored the people-to-people links referring to more than 280,000 people from the SAARC region migrated permanently to Australia and 93,000 South Asian students in 2007 enrolled in Australian institutions.³⁵ At the Perth launch of Future Directions International's inaugural Indian Ocean Dialogue on 6 July 2010, Stephen Smith meant a comprehensive approach for upgrading Australia's engagement with regional groupings like IOR-ARC and SAARC,³⁶ given the fact that Australia has been the member of as many 63 international organizations.³⁷

³⁴ Media Release, "Australia invited as Observer to the South Asian Association for Regional Cooperation (SAARC) Summit," August 05, 2008. http://foreignminister.gov.au/releases/2008/fa-s125_08.html (accessed November 15, 2016).

³⁵ *Ibid.*

³⁶ SFADTRC (Senate Foreign Affairs, Defence and Trade References Committee), *Inquiry into Australia's trade and foreign relations with the Indian Ocean rim*, April, (Canberra: Department of Foreign Affairs and Trade, 2012), 92.

³⁷ "Field Listing - International organization participation," *The World Fact Book*, December 13, 2007. <http://www.emprededor.com/factbook/fields/2107.html> (accessed October 10, 2016).

Australia for Greater Engagement with South Asia: The Parliamentary Secretary for International Development Assistance, Bob McMullan, who led Australia's delegation to 16th Summit, considered "the opportunity to attend the SAARC Summit as a further step in enhancing (our) long standing and strong bilateral relations with the countries of South Asia." Apart from reaffirming Australia's commitment to promoting greater engagement with South Asia and sharing our experiences with SAARC member states on key policy issues, McMullan outlined "common interests in democracy, security, trade and investment built on strong historical bonds."³⁸ With optimism over increased prosperity and stability in the region, McMullan further expressed Australia's inclination "to share (our) experiences with SAARC member states on key policy issues including climate change and food security." As a part of the project for augmenting the scarce water supplies efficiently for more productive harvests, Australia announced \$ A 1.0 million to improve water management and agricultural practices. Of much significance was the 'SAARC-Australia Project on 'developing capacity in cropping systems modelling for sustainable use of water resources to promote food security in South Asia,' launched by SAARC Secretary General, Uz. Fathimath Dhiyana Saeed, on 8th August 2011 at the SAARC Agriculture Centre, Dhaka, in the presence of Justin Lee, Australian High Commissioner to Bangladesh.^{IV} Incidentally, a 3-day Training Workshop (8-10 August) was held at this Centre to train altogether 31 trainees from Bangladesh (7), Bhutan (3), India (9), Nepal (3), Pakistan (4) and Sri Lanka (5) through five resource persons from the Commonwealth Scientific and Industrial Research Organization (CSIRO) and International Rice Research

³⁸ Bob McMullan, *Australia attends South Asian summit in Bhutan*, April 29, (Canberra: Australian Agency for International Development, Government of Australia, 2010). [http:// reliefweb. int/report/afghanistan/australia-attends-south-asian-summit-bhutan](http://reliefweb.int/report/afghanistan/australia-attends-south-asian-summit-bhutan) (accessed November 01, 2016).

Institute (IRRI).³⁹ This was a unique Project, supported by the Aid Program of the Australian Government (AusAID and Australian Centre for International Agricultural Research (ACIAR) for training the experts to build capacity within the National Agricultural Research Organizations in SAARC Member States.^V CSIRO in its deposition in Hansard on 5 December 2012 accentuated that the SAARC-CSIRO project was aiming at training South Asian scientists in farming systems research and thereby promoting agricultural productivity.⁴⁰ This project offered Australia's expertise to build capacity within SAARC agricultural research organizations to undertake more effective research to solve the future food security and water use research issues. The critical evaluation report submitted by the scientists of CSIRO (Australia), IRRI (the Philippines) and SAARC Agriculture Centre (Bangladesh) termed the project "successful in laying the groundwork for a future functional network of cropping systems modellers in the SAARC countries."⁴¹

Australia has environmental security and sustainable water usage for agriculture as its priority areas of cooperation with SAARC. Keeping in mind the possible water shortages for farming likely to be aggravated by climate change, McMullan laid emphasis on "sharing (our) experiences in irrigated and dry-land farming that would help farmers boost their yields and improve incomes for

³⁹ SAARC-Australia Project: *Developing Capacity in Cropping Systems modelling...in South Asia*, August 24, (Dhaka: saarc-sec.org, 2011). <http://saarc-sec.org/2011/08/24/news/SAARC-Australia-Project--Developing-capacity-in-cropping-systems-modelling-for-sustainable-use-of-water-resources-to-promote-food-security-in-South-Asia-Dhaka-8th-August-2011/69/> (accessed October 06, 2016).

⁴⁰ SFADTRC (Senate Foreign Affairs, Defence and Trade References Committee), *Inquiry into Australia and the countries of the Indian Ocean Rim: Public Hearing*, December 5, (Canberra: Hansard, 2012), 17.

⁴¹ D.S. Gaydon and others, *A Critical Evaluation of the SAARC-Australia Project* (Chapter 16), (Brisbane, Queensland: CSIRO Ecosystem Sciences, 2014). <https://www.researchgate.net/publication/263162382> (accessed October 16, 2016). Also see *supra* 18, p.71.

themselves and their families." Under a \$ A 3.0 million South Asia Water Initiative with the World Bank, Australia has also assured to improve water management at a regional level to help communities across borders facing similar water management problems and relying on the same water sources for their livelihoods. An assistance of \$ A \$15.0 million has also been assured by Australia to support for public sector organizations in South Asia.⁴²

Australia's Foreign Policy Pivot to South Asia: On the eve of Australia's participation in 17th SAARC Summit, Australia's Parliamentary Secretary for Foreign Affairs, Richard Marles, looked at "South Asia as being fundamental to Australia's foreign policy, and indeed fundamental to Australia's future." Marles, in an interview with Radio Australia on 8th November 2011, underlined the importance Australia has attached to South Asia: "This is a place of enormous potential, it's a place of growing relationships between Australia and the region... it's also a place where there are, for example, very thick trade borders... that would unlock enormous economic potential of this region, which could only be of benefit to Australia... we regard this region as very important to our future, and it's a region in which we have an enormous interest" (*ministers.dfat.gov.au*. 2011; RadioAustralia 2012).⁴³ While highlighting the importance of SAARC, Marles further outlined that "we stand here as a willing partner to provide whatever practical assistance we can - and we are doing that in a number of ways - but also to give our support to the growing

⁴² *Supra* note 38.

⁴³ Department of Foreign Affairs and trade (DFAT), "'Connect Asia' – Interview with Sen Lam," November 08, (Canberra: Government of Australia, 2011). http://ministers.dfat.gov.au/marles/transcripts/Pages/2011/rm_tr_11110_radio_australia.aspx?w=tb1CaGpkPX%2FIS0K%2Bg9ZKEg%3D%3D (accessed October 20, 2016). Also see "Australia ready to support SAARC nations build closer ties," 28 February, (Canberra: Radio Australia, 2012). <http://www.radioaustralia.net.au/international/radio/onairhighlights/australia-ready-to-support-saarc-nations-build-closer-ties> (accessed October 09, 2016).

process of trust in the region,” besides looking at SAARC an opportunity for both India and Australia to work together on projects of mutual interest. Whilst at the 17th Summit (Addu, Maldives: 10-11 November 2011), Marles admitted “clear, practical assessment of Australia’s priorities and interests” in South Asia and Australia’s “growing strategic, economic, diplomatic, commercial and political weight of the South Asian region, and its extraordinary potential.” Having realized the economic and infrastructure connectivity as being crucial to the development and integration in the region, Marles reiterated “Australia’s official development assistance strategy for South Asia (so much) to complement the building bridges theme in SAARC.”⁴⁴

Australia weighs up South Asia’s Integration for Peace and Prosperity: For all its strong conviction of South Asia as “a region of extraordinary economic potential,” Australia was about the same time skeptical of South Asia as being “the least integrated regions in the world.” While making these observations, the Parliamentary Secretary to the Minister for Foreign Affairs, Senator Brett Mason who led the Australian delegation to the 18th SAARC Summit (Kathmandu: 26-27 November 2014), regarded the theme of Summit --“Deeper Integration for Peace and Prosperity” -- as central to Australia’s engagement with South Asia and the world. Australia, Mason further avowed, was gratified to support SAARC, and South Asia, in their search to “tackle these obstacles to integration” and to “spur economic growth by advancing regional cooperation and integration.” In 2014-15, Australia planned to provide a total of \$ A 405.9 million in

⁴⁴ DFAT, “17th Summit of the South Asian Association for Regional Cooperation (SAARC) - Australia’s Address, Addu, (Maldives),” November 11, (Canberra: Government of Australia, 2011). http://ministers.dfat.gov.au/marles/speeches/Pages/2011/rm_sp_111111.aspx?w=tb1CaGpkPX%2FIS0K%2Bg9ZKEg%3D%3D (accessed October 20, 2016).

development assistance to SAARC members, besides funding 290 long-term scholarships to South Asian students in 2015 under the Australia Awards program. Australia's strong focus on economic diplomacy in pursuit of peace and prosperity through trade, investment and economic growth, as underscored by Mason, was vindicated by Australia's commitment in 2015 to upgrade its support for integration in South Asia with a new \$20 million initiative to help trade flow more freely between SAARC members.⁴⁵

SAARC-Australia Trade hinging on Mutual Competitive Strength: In pursuance of its multilateral approach to trade liberalisation, the Australian government has regarded its Observer status as a beginning for another regional trade initiative with South Asia. A Free Trade Agreement (FTA) between Australia and SAARC countries is expected to strengthen the trade by way of harnessing the mutual competitive strengths and removing barriers to trade and investment on a bilateral basis. SAARC countries have begun emerging as trading partners of Australia given the phenomenal growth of trade over two decades from a meager of US \$ 820 million in 1990 through \$ 2334 million in 1999 to 1440 million in 2009, although huge trade balance has been in favour of Australia (*IMF Direction of Trade Statistics Year Book*, Various Issues). A detailed study conducted by a reputed Australian Institute (School of Business, Economics and Public Policy, University of New England, Armidale, New South Wales) concluded that there was a potential trade diversion as a consequence of the preferential free trade under the FTA.⁴⁶

⁴⁵ DFAT, "Australia's Opening Statement, South Asian Association for Regional Cooperation (SAARC) Summit, Kathmandu (Nepal)," November 26, (Canberra: Government of Australia, 2014). http://ministers.dfat.gov.au/mason/speeches/Pages/2014/bm_sp_141126.aspx?w=97_hIoZC4PHe7VC%2F%2F1w31%2FA%3D%3D (accessed October 18, 2016).

⁴⁶ Mahinda Siriwardana, "Trade between Australia and South Asia: Prospects for a Bilateral Free Trade Agreement," paper presented to the *18th Biennial*

Conclusion

The inclusion of extra-regional states as observers proved beneficial to SAARC by way of enhancing its image as an important economic and strategic forum at a global level. Australia has been quite optimistic over its Observer Status in SAARC to annually engage South Asian Governments at the highest levels and regularly with South Asia's premier regional body, SAARC. Of much relevance is the Colombo Plan that was launched in January 1950, as "a method of creating goodwill" and "demonstrating the Australian understanding and readiness to cooperate" in raising the living standards,⁴⁷ and hence it was hailed as "praiseworthy..., remarkable and significant."⁴⁸ As if giving credence to the Colombo Plan's gesture to the developing countries, Australia has once again embarked on the approach of assisting the SAARC nations. Known as the "New Colombo Plan," this new initiative is, among various commendable features, to fund the Australian undergraduate students to study and undertake work experience in South Asia. Australia weighs up institutional and people-to-people links through hundreds of thousands of migrants and students for promoting "an understanding of the rich cultures of our neighbours and the opportunity to build lasting friendships and contacts" (*ministers.dfat.gov.au*. 2014),⁴⁹ given the fact that Australia, like the USA, has in the recent times been the preferred destination for South Asians. The Senate Foreign Affairs, Defence and Trade References Committee noted that Australia's bilateral relationships with all the countries of South Asia have also grown in breadth and depth, from India, Sri Lanka and

Conference of the Asian Studies Association of Australia, July 5-8, (Adelaide, 2010). <http://pandora.nla.gov.au/pan/124461/20110211-1446/asaa.asn.au/ASAA2010/index.html> (accessed October 08, 2016).

⁴⁷ Gordon Greenwood and Norman Harper (eds.), *Australia in World Affairs, 1950-1955*, (Melbourne: Cheshire, 1957), 269-270.

⁴⁸ Gordon Greenwood, *Approaches to Asia: Australian Postwar Policies and Attitudes*, (New York: McGraw Hill Book Co., 1964), 345.

⁴⁹ *supra note 45*.

Pakistan to Bangladesh, Nepal and the Maldives.⁵⁰ Australia has been cognizant of its future closely linked South Asia and the Indo-Pacific region that represents the confluence rather centre of gravity of Australia's economic and strategic interests. There is lack of symmetry as vindicated by India's obsession with the disgruntled neighbours in South Asia, vis-à-vis Australia's relatively secure in its southern ocean. Yet, they have perceptible convergence in their security interests and security partnership. Just as their membership in a gamut of multilateral bodies is not necessarily a diplomatic tactic, but providing a critical platform for strategic economic cooperation between India, China, Japan, Southeast Asia and Australasia, Australia's Observer status in SAARC augurs well for bridging the political bickering among SAARC countries by way of erasing the trust-deficit and improving the socio-economic development of South Asian nations.

Notes

- I SAARC has its persistent relations in the form of Memorandum of Understanding (with UNCTAD, Asia Pacific Telecommunity # APT, United Nations International Drug Control Programme # UNDCP, International Telecommunications Union # ITU and UNDP), Framework Agreement (with ESCAP), Cooperation Agreement (with UNICEP and Colombo Plan.
- II The United States, Pakistan, India and Japan have attended as Sectoral Dialogue or Full Dialogue partners at the Summit meetings of ASEAN having all the 10 countries of Southeast Asia as its Members. SCO which has China, Russia, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan as Member states, have several other countries as Acceding States (India and Pakistan), Observer States (Afghanistan, Belarus, Iran and

⁵⁰ *supra* note 36, p.88.

Mongolia), Dialogue Partners (Armenia, Azerbaijan, Cambodia, Nepal, Sri Lanka and Turkey) and Guest Attendances (ASEAN, CIS and Turkmenistan).

- III China proposed to institutionalize the China-South Asia Business forum to serve as a platform for discussion on economic problems and trade; and Japan identified “better regional connectivity” as the target of Japan’s expanded cooperation with SAARC, besides contributing USD 7 million to the SAARC-Japan Special Fund for furthering social and cultural exchanges with South Asia; while the US thought on the lines of supporting the areas like trade and education as well as the organization and its goals.”
- IV The SAARC-Australia project assumed significance through the participation of Dignitaries from Embassies/High Commissions of SAARC Member States, Foreign Ministry and other organizations, besides Dr. Abdul Kalam Azad, Director, SAARC Agriculture Centre, Dr. Christian Roth, Project Team Leader, SAARC-Australia Project and Senior Principal Research Scientist of CSIRO and Dr. Wais Kabir, Executive Chairman, Bangladesh Agricultural Research Council.
- V This inimitable project would undertake the following activities with an aim to accomplish its **Goals** and garner the expected **Outcomes**.⁵¹
 1. To establish a network of agricultural research scientists in SAARC Member States collaborating on cropping systems analysis and modelling.

⁵¹ *supra note 39.*

Also see C.H. Roth D.S. and Gaydon, *Introduction to the SAARC-Australia Project* (Chapter 1), (Brisbane, Queensland: CSIRO Ecosystem Sciences, 2014). <https://www.researchgate.net/publication/263238239> (accessed November 07, 2016).

2. To apply Agricultural Production System Simulator (APSIM)-ORYZA model to identify a suite of improved crop and water management practices that increase water productivity (WP) of representative rainfed and irrigated rice-based cropping systems.
3. To strengthen institutional support in SAARC Agriculture Centre and in SAARC Member States for systems analysis and farming systems modelling as a means of enhancing research impact in addressing water scarcity and other future cross-sectoral issues.
4. To establish a network of agricultural research scientists in SAARC Member States collaborating on cropping systems analysis and modelling.

The expected *Outcomes* of the project are:

1. Twenty scientists from SAARC Member States trained in the use of cropping systems modelling using APSIM-ORYZA.
2. Improved crop and water management techniques identified to improve water productivity in selected rice-based cropping systems of South Asia.
3. A modelling database established and capacity built in SAC to provide ongoing modelling support to SAARC Member State scientists.
4. Strengthened institutional support for modelling within SAARC Member State National Agricultural Research organisations (NARS).

SAARC – Japan Relations: Shifting Trends

*Prof. A. Lakshmana Chetty**

Introduction

Meiji Restoration of 1868 marked watershed in the history of Japan as the period that followed this historic event witnessed unprecedented development in each and every sphere of Japan. Japan's spectacular victories in the first Sino-Japanese War (1894-95), and the Russo-Japanese War (1904-05), prompted the UK, the then indisputable dominant power in the world, to acknowledge Japan's rise by concluding the Anglo -Japanese Alliance in 1902. During the World War I, the Allied powers (the US, the UK, Russia and France) and during the World War II, Germany and Italy (which along with Japan were called Axis Powers) gave Japan a freehand in the east. Japan's imperialist career was brought to an end with the dropping of atomic bombs on Hiroshima and Nagasaki, the industrial belts of Japan, in August 1945. Japan, which remains the only country in the world to be devastated by nuclear attack, took hardly two decades to recover from nuclear holocaust. Thanks to the nationalistic spirit, dedication and hard work of the Japanese, Japan had emerged as the second largest economy in the world. Japan became America's steadfast ally to be sheltered under the US security umbrella, and joined multilateral organizations such as the Association of Southeast Asian Nations (ASEAN), ASEAN Regional Forum (ARF), East Asia Summit (EAS) and the Asia Pacific Economic Cooperation (APEC) to mention a few. Japan's economic and political clout prompted Tokyo to play an "assertive" role in international affairs and also to claim permanent seat in the United Nations Security Council (UNSC) and to demand reform of the world body.

* Former Director, Centre for Southeast Asian & Pacific Studies, S.V. University, Tirupati.

While Japan's relations with the countries in the Southeast Asian region blossomed following its association with the ASEAN process, similar trend was not noticed in South Asia. Candidly admitting that South Asia was a low priority region for Japan, Hiroshi Hirabayashi, Japan's ambassador to India, said in his speech in Jawaharlal Nehru University, New Delhi, on March 8, 1999: "The first priority was always accorded to China and Korea and second to South East Asian countries. South Asia rarely came up in our diplomatic priorities."¹

However, Japan could ill-afford to turn a blind eye to South Asia, particularly after the region started treading the path of reform of market, liberalization, growth and development. The region is home for the second most populous country in the world and the two nuclear armed countries. It abounds in natural resources and skilled and unskilled workforce which the growing industries need. What is more, the region represents a huge market of 1.6 billion people. Japan also perceived the importance of the region where China got entrenched by investing hugely in various developmental projects undertaken by the regional states. Further, the ships carrying oil from West Asia to Japan pass through this region. Japan, therefore, believed that a friendly, peaceful and stable South Asia eminently serves its national interests.

As the world's second/third largest economy, Japan's primary focus was on economic cooperation, including ODA (Official Development Assistance), and trade and investments. However, factors such as cooling of relations between China and Japan, menacing piracy in the high seas and victimization of Japanese nationals abroad by the terrorists, have convinced Japan to add security dimension to its foreign policy. Since Japan is a country

¹ Fazal- ur-Rahman, "Japan and SAARC: Prospects for future cooperation," <http://www.issi.org.pk/journal/2001files/no4/article/3a.htm>. (accessed November 14, 2016).

which highly values its culture, Japanese foreign policy is also oriented towards promoting its rich culture. In this paper, an attempt is made to bring out the dimensions of South Asian Association for Regional Cooperation (SAARC)-Japan relations at the institutional level and at the bilateral level which includes ODA, trade and investments, security and cultural cooperation. Since all the countries of South Asia are members of SAARC, the terms such as SAARC, SAARC region, South Asia, South Asian region, SAARC countries and South Asian countries are used interchangeably in this paper. Further, in describing SAARC-Japan relations, India takes more space than other SAARC countries as it accounts for 70 per cent of South Asia's population and eighty per cent of South Asia's GDP.²

Japan – SAARC Relations at Institution level

SAARC was formed in 1985 by the seven South Asian nations – India., Bangladesh, Pakistan, Nepal, Sri Lanka, Bhutan and the Maldives-while Afghanistan joined later as eighth member. SAARC's modest objectives include promotion of economic growth, social progress and cultural development in the South Asian region. Even though the performance of SAARC has been well below par, Japan chose to associate itself with the SAARC process hoping that, as the Foreign Ministry spokesman Yos hio Hatano had said in a statement on December 9, 1985, “the new SAARC will contribute to stability and development of the area.”³ The growing number of extra regional powers desirous of joining SAARC indicated the growing recognition of the significance of SAARC. Japan itself joined SAARC as an Observer at its Fourteenth Summit hosted by India on April 3-4, 2007.

² Razeen Sally, “What can South Asia learn from East Asia?,” <http://www.eastasiaforum.org/2013/01/23/what-can-South-Asia-learn-from>. (accessed November 14, 2016)

³ *The Japan Times*, December 10, 1985.

Prime Minister Kaifu visited India in 1990, which happened to be the first ever visit by a Japanese Prime Minister to the South Asian region. During this visit, he stated that the formation of SAARC bode well for “building a new world through cooperation”. Very next year, Japan created ‘South Asia Forum’ (SAF) in order to develop its interaction with the regional states. In 1993, Japan created SAARC- Japan Special Fund (SJSF) to strengthen the activities of SAARC. The Ministry of Foreign Affairs of Japan (MOFA) proudly boasted. “The fund is the only financial support for SAARC from outside the region.”⁴ In March 2013, Japan offered 623,500,000,00 yen to SAARC to undertake the programme of ‘Japan East Asia Youth Network of Exchange for Students and Youths’ (JENESYS).⁵ In the South Asian sphere of regional connectivity, Japan sharpened focus on enhancing connectivity in the region as well as linking the region with the neighboring ASEAN region which was vitally important for “realizing the economic potential of the region.”⁶ It was a sad commentary that but for the absence of peace and harmony which has been the bane of the region, Tokyo would have evinced greater interest in promoting its cooperation with the SAARC.

Japan’s bilateral cooperation with SAARC countries

(a) Official Development Assistance (ODA)

Japan’s economic cooperation with the SAARC countries began with the donation of aid through ODA, which is the arm of MOFA. As of 2003, Japan provided \$ 221 billion to 185 nations. The chief

⁴ “The South Asian Association for Regional Cooperation (SAARC) and Japan,” June 2009, at <http://www.mofa.go.jp/region/asia-paci/saarc/overview.html> (accessed October 5, 2016).

⁵ “Secretary General of SAARC welcomes Japan’s contribution to JENESYS 2.0”, <http://saarc.sec.org/2013/03/22/news/Secretary-General-of-SAARC-welcomes-Japanese-contribution-to-JENESYS-2.0/116/> (accessed October 23, 2016).

⁶ “Japan keen to support energy network among SAARC countries,” *Daily News Analysis* (DNA), New Delhi, January 17, 2015.

objective of ODA programme is the development of economic and social infrastructure. ODA was also designed to strengthen bilateral relations with several countries, particularly those which were critically important for advancing the national interests of Japan. Incidentally, the areas of assistance chosen by Japan are also priority areas of development of SAARC nations. However, following the revision of ODA Charter in 2003, ODA gained security dimension.⁷ ODA was thus availed to shore up the countries which were considered important from for security point of view of Japan and of its Western Allies. In the ODA programme, Japan accorded priority to Asia perceiving it to be having “greater impact on the stability and prosperity of Japan”. In 2002, as much as 74 per cent of ODA was garnered by Japan’s Asian neighbors including South Asian nations.⁸ In 2001-02, four South Asian nations – India, Bangladesh, Pakistan and Sri Lanka – were among the top ten recipients of ODA. Offer of ODA in substantial quantities facilitated the deepening of Japan’s ties with the SAARC countries. The South Asian nations perceived Japan as a benign and credible partner.

Japan launched its programme of economic cooperation with India in 1958 by offering an ODA loan of \$ 50 million. As the MOFA had asserted, this ODA loan was “the first ODA Japan had ever provided not only for India but for any country.”⁹ In 2004, India emerged as the topmost beneficiary of ODA and continues to be so till date. Highlighting the significance of ODA funds to India, MOFA stated: “Japan’s ODA for India is one of the important tools

⁷ Ministry of Foreign Affairs of Japan, “Revision of Development Assistance Charter,” http://www.mofa.go.jp/policy_of_oda/reform/revision_0307.html. (accessed October 23, 2016).

⁸ Oliviero Frattolillo, “Beyond Japan’s Aid Fatigue: The Path from the Cold War Gaiatsu to the New Millennium Agenda,” *Asia Pacific Journal of Social Sciences*, (Tirupati) Vol.3, (December 2012), pp. 29-30.

⁹ Ministry of Foreign Affairs of Japan, “Overview of Japan’s ODA to India,” June 2011, <http://www.mofa.go.jp/policy/oda/region/sw-asia/india-o.pdf>. (accessed November 2, 2016).

to strengthen Japan-India relations set forth by Japan-India Strategic and Global Partnership.”¹⁰ At the SAARC Summit (2007), Japanese Foreign Minister Taro Aso declared that India had become the largest recipient country for yen loans for the fourth consecutive year. Then Indian Prime Minister Manmohan Singh conveyed India’s “gratitude” for Japan’s fine friendly gesture.¹¹

Japan, whose economy was badly hit due to political instability during 2006-12, was forced to reduce its ODA commitments to the recipient nations. As a result, Japan, which remained the topmost provider of ODA in the world at the dawn of the new millennium, slid to fifth position.¹² Curiously enough, Japan increased its ODA to India even under these trying circumstances. In FY 2006, for various ODA projects, India received \$ 1547.7 million whereas all other South Asian nations together got \$ 989.7 million.¹³ What is more, in 2008, for the first time ODA to India crossed \$ 2 billion mark.¹⁴

Afghanistan, which was perceived by Japan as “a valued and reliable partner”, received a cumulative assistance of \$ 2.49 billion in 2009. In November 2009, Japan pledged additional \$ 5 billion aid package to Kabul. Bhutan was one of the South Asian countries receiving Japanese ODA to promote democracy. In 2007, Bhutan was offered \$ 30 million for infrastructure development and disaster management. Sri Lanka has been receiving Japanese ODA from the

¹⁰ *Ibid.*

¹¹ “Attendance by Foreign Minister Taro Aso at the SAARC Summit,” April 9, 2007, <http://www.mofa.go.jp/region/asia-paci/saarc/summary0704.html>. (accessed November 4, 2016).

¹² Lalima Verma, “Challenges to Japan’s Foreign Policy in the Twenty First Century. Placing India,” in *India-Japan Relations*, ed. G. Jayachandra Reddy, (Tirupati: CSEAPS, 2014), 135.

¹³ Calculated by the author with the help of <http://www.mofa.go.jp/region/asia/saarc/support0704.pdf>. (accessed November 4, 2016).

¹⁴ Uttam Kumar Jamadhagni, “Indo-Japan and Ocean Security: Contexts, Convergences and Constraints,” in *India-Japan: Towards Harnessing Potentials of Partnership*, ed. Y. Yagama Reddy, (New Delhi: 2012), p.72.

late 1950s. Japan is the largest aid giver to Sri Lanka. Japan offered ODA loans of \$ 174.99 million to Southern Highway Construction Project, \$ 8.20 million to Energy Diversification Enhancement Project, and \$ 57.18 million to Greater Colombo Urban Transport Development Project.

Even though Pakistan emerged as an epicenter of terrorism and an all weather friend of China, the “bête noire” of Japan, Tokyo could not ignore Islamabad for strategic reasons. Pakistan remained a major beneficiary of Japanese ODA. In the FY 2006, ODA loans to Pakistan totaled \$ 236.3 million. Japan’s ODA facility was utilized for infrastructure development.

In FY 2006 Japan offered ODA Loans to Bangladesh to the tune of \$ 226.9 million. Japan paid attention to the development of economic infrastructure including roads, bridges and power transmission. However, some in Bangladesh expressed displeasure over Japan’s neglect of sectors like water, food security and climate change.¹⁵

Land-locked Nepal may be an inconsequential country in Japanese strategic calculations. Yet, Japan attached due importance to this Himalayan country in which the headquarters of SAARC is located. In 2002, Nepal was among the 30 top recipients of ODA.¹⁶ The Maldives was offered Japanese ODA substantially. ODA loans offered to the Maldives in FY 2006 amounted to \$ 24 million.¹⁷

Trade and Investments

The Cold War period was aptly described as a ‘dark period’ in the relations of Japan and South Asia. This is more so in the field of

¹⁵ Barrister Haruur Rashid, “Bangladesh-Japan together at 40,” <http://www.thedailystar.net/news-detail-221467>) (accessed November 1, 2016).

¹⁶ Bhim Chimoriya, “Nepal-Japan Economic Cooperation,” <http://www.wisenepali.com/2014/11/nepal-japan-economic-cooperation> (accessed November 1, 2016).

¹⁷ *Supra* note 11.

economic cooperation between them. Despite Japan's generous assistance in the form of ODA to all the countries of South Asia, the region's share in Japan's global trade and investments remained low, and if at all there was any improvement in Japan's economic cooperation with the region, that was limited to India-Japan bilateral economic cooperation. Japan is strong in capital, technological skills and product development, while South Asia, as pointed out earlier, with a huge population of 1.6 billion – comprising skilled, and unskilled labor, and people sound in technical skills – serves as a vast market. It is intriguing that even these complementarities failed to impart dynamism to the economic cooperation between Japan and the South Asian countries. What factors impinged on Japan-South Asia cooperation in trade and investments?

Japanese business leaders did not find India a trouble free destination for their investments as those of East and Southeast Asian countries. The President of the Japanese Chamber of Commerce and Industry in India, in his letter to Commerce Secretary Amitabh Kant, identified areas of problem such as, “tax system, banking sector, logistics and distribution segment, visas and the pivotal infrastructure sector” which hindered the flow of Japanese investments into India.¹⁸ Some analysts pointed out that the Japanese too played their part in preventing the free flow of Japanese investments into India. The Japanese, who wanted to invest in India, had to overcome Japanese bureaucratic obstacles. Japanese investors did not master the technique of approaching the right kind of people for getting their files cleared in India. More important, they were not aware of the fact that Japan stands to gain much by cultivating good relations with India. The Japanese Policy Body, ‘Japan Forum on International Relations’ (JFIR), candidly observed that it was time the Japanese business community changed its mindset and adopted a truly global plan and policy taking into

¹⁸ *The Hindu*, August 18, 2014.

account the ground realities in India which have under-gone a sea change. The JFIR also noted that many Japanese companies are still in the dark about Indian business potential and opportunities of growth.¹⁹

In order to bolster Japanese businessmen's confidence in India, Prime Minister Modi introduced various reforms which were described by the Japanese Prime Minister Abe as comparable to the "speed and safety" of Shinkansen.²⁰ Modi also lost no opportunity to enthuse Japanese business leaders. Addressing a businessmen symposium organized by Nikkei and JETRO (Japan's trade promotion body) in Tokyo, Modi stated: "No other country offers such opportunity as India, given the fact that it has democracy, demography and demand".²¹ To create a positive investment climate, the Japanese government launched the programme of training 3000 Indians in "Japanese style manufacturing practices."²² In addition to these moves, the China factor also contributed to bring about radical change in the perception of the Japanese business people about India. Japanese had invested heavily in China. In 2005, Japan's direct investments in China reached an all time high of \$ 6.5 billion. But, increasing arrogance of China has jolted the Japanese businessmen who asked themselves whether it was wise enough to put all the eggs in one basket, particularly after the escalating tensions between China and Japan over Senkaku islands. On the contrary, they perceived South Asia, particularly India, as a safe bet.²³

Trade and investments constituted the two major elements of economic cooperation between South Asia and Japan. But, sadly,

¹⁹ Shreyali Srivastava, "Indo-Japan Foreign Direct Investment," in ed. G. Jayachandra Reddy, *supra* note 11, p.113.

²⁰ Sreeram Chaulia, "Kyoto to Kashi," *Deccan Chronicle*, December 15, 2015.

²¹ "CII Pitches for Boosting Biz with Japan," *The New Indian Express*, September 3, 2014.

²² Kamalendra Kanwar, "After India-Japan Summit," *Ibid*, June 11, 2013.

²³ *Ibid*.

South Asia-Japan cooperation in these fields has been below par. It was only in the first and second decades of the present century that the situation began to change for good. Even then, as a researcher at the Osaka School of International Public Policy, Osaka University, Japan, has rightly pointed out, “Japan’s trade and investments in South Asia is mostly India-centric.”²⁴ India-Japan bilateral trade, though far behind that between India and China (which amounted to \$ 70.73 billion in 2015-2016), made impressive growth. The bilateral trade which stood at \$ 5.4 billion in 2004-2005, galloped to \$ 10.4 billion in 2009-2010, \$13.7 billion in 2010-2011, \$ 18.3 billion in 2011-2012 and \$18.5 billion in 2012-2013.²⁵

Even though India-Japan bilateral trade registered an increase of three times in less than a decade, balance of payments remained hugely in favour of Japan. Commerce Minister Nirmala Sitharaman stated on October 6, 2016, India’s trade deficit with Japan increased from \$ 3.1 billion to 5.25 billion after the Comprehensive Economic Partnership Agreement (CEPA) was concluded in 2011.²⁶ In order to solve this problem, India seeks to diversify its trade with Japan. As part of this strategy, India is trying to tap the huge pharmaceutical market of Japan. Striking a note of confidence, MS. Sitharaman said: “India’s strength in pharma sector is well established. This coupled with the decision of Government of Japan towards attaining an 80 per cent share of generic medicines by 2018, should provide an opportunity for the generic drug industry of India.”²⁷

²⁴ S.M. Ali Reza, “Japan and South Asia: Still distant Neighbors,” <http://ir.library.osaka-u.ac.jp/dspace/bitstream/11094/51319/1/oripp-034-079.pdf> (accessed October 19, 2016).

²⁵ *Supra* note 21.

²⁶ “India seeks greater pharma market access in Japan,” *The Hindu*, October 17, 2016.

²⁷ *Ibid.*

In their bilateral trade with Japan, all other South Asian countries were far behind India because they were unable to identify new items of export. During 2007-2012, the total bilateral trade of Japan with India was worth \$ 83.6 billion, while that with Pakistan \$ 10.8 billion, Sri Lanka \$ 4.1 billion, Bangladesh \$ 7.5 billion, Nepal \$ 225.75 million, Bhutan \$ 69 million and the Maldives \$ 65.45 million. The data shows that Japan's bilateral trade with India has been growing at a rapid pace²⁸ and with other South Asian nations at a slow pace. However, in the sphere of trade with the South Asian region as a whole, China is way ahead of Japan. But, the scenario is bound to change because of various factors such as, Prime Minister Modi's initiatives in the direction of 'Make in India', and the export of nuclear power generation technologies and equipment to India, and, more important, the lifting of Japan's 50 year-old ban on arms exports.

Just as its trade, Japan's investments in the South Asian countries too leapfrogged. The revision of ODA Charter in 2003 allowing ODA to be used for strategic purposes enabled Japan to invest in the development of India's ports, maritime infrastructure and shipyards which would serve commercial as well as military purposes at a time when Japan was growing wary of Chinese Navy build up in the Indian Ocean.²⁹ Japan also sought to give boost to India's infrastructure development by investing in the flagship projects such as the Delhi-Mumbai Industrial Corridor (DMIC) and the Dedicated Freight Corridor (DFC). Japan came forward not only to fund partly but also to tap sources like Japan International cooperation Agency (JICA) and India Infrastructure Finance Company Ltd (IIFCL) to execute these two massive projects under Public Private Partnership (PPP) mode. These two initiatives, which

²⁸ *Supra* note 2.

²⁹ "Japan concerned over Chinese Navy build up in Indian Ocean," <http://www.rthaindian.com/newsportal/india-news/japan-concerned-over-chinese-navy-build-html/> March 2008. (accessed October 26, 2016).

have taken India-Japan cooperation to dizzy heights, will change the face of Indian economy.

Japan agreed to invest \$ 744 million for a road building project in Mizoram, Meghalaya and Assam, of the northeastern region for which the Government of India is paying special attention. It is a strange coincidence that while India requires a whopping \$ 1 trillion to develop its infrastructure, Japan's exchange reserves stand at \$ 1 trillion. Brimmed with cash, Japan is enthusiastic to invest in Prime Minister Modi's novel projects such as "Make in India", "Digital India", "Skill India", "Clean India", and "Smart City". As part of "Make in India" initiative, Japan agreed to transfer military technology which facilitates the assembling in India ten of the twelve 'US-2i' amphibious aircraft which India is purchasing from Japan. Tokyo came forward not only to invest in India but also to offer funds to India's development of the Chabahar Port in Iran, which is strategically significant. Till 2015, there were as many as 1200 Japanese firms operating in India and the number will go up as many more Japanese firms are showing interest in India. With the flow of investments into India picking up, India is confident of giving a fitting reply to China's strategic project of "One Belt, One Road", a network of roads, railways and ports designed to connect China with the rest of Asia and Europe. A senior Indian official, hence, said on condition of anonymity, China's project would be answered by "a more decentralized, local but organic response."³⁰

Japan is Bangladesh's fourth-largest source of Foreign Direct Investment (FDI), the other three being the US, the UK and Malaysia. According to the 'Blue Book, 2016' of the MOFA, the number of Japanese – affiliated companies doing business in Bangladesh has increased from 61 (2005) to 238 (2015).³¹ As part

³⁰ Ellen Barry, "India collaborates with Japan on Andaman project," *The Hindu*, March 13, 2016.

³¹ "Japan's Foreign Policy that Takes a Panoramic Perspective of the World Map,"

of Japan's plan of deepening its economic and security cooperation with the strategically located Bangladesh, Tokyo has launched the "Bay of Bengal Industrial Growth Belt" (BIG-B) whose three pillars are: (1) Developing economic infrastructure in Bangladesh, (2) Improving Investment environment; and (3) Fostering connectivity.³²

Sri Lanka, like Bangladesh, depended heavily on China despite receiving a fair amount of Japanese assistance. Nonetheless, during Prime Minister Abe's visit to Sri Lanka in September 2014, which happened to be the first Japanese Prime Minister's visit to Sri Lanka, Colombo agreed to join Japan, in developing their relationship into a "New Partnership between Maritime Countries". The fact that Prime Minister Abe's entourage included a large number of businessmen indicated Japan's keen interest in continuing economic cooperation for the development of infrastructure including logistics and energy.

Pakistan – which strategically a priority area for Tokyo – remained a low priority area, in terms of economic cooperation. In 2012, Japan's investment in various projects of Pakistan amounted to \$3.2 billion. In June 2014, Japan provided 5 billion yen for the programme of Energy Security Reform as part of Japan's drive to improve economic as well as social infrastructure in Pakistan.³³

Japanese investments in the South Asian countries, save India, were low. However, there is reason to believe that the situation will improve greatly as Japan and China are vying with each other to flood Asia with investments. In May 2015, Japan unveiled a plan to invest \$ 110 billion over five years which tops the \$100 billion

<http://www.mofa.go.jp/policy/other/bluebook/2016/htms/chapter2/co20104.html> (accessed November 5, 2016).

³² "South Asia", www.mofa.go.jp/files/000119325.pdf (accessed November 7, 2016).

³³ *Ibid.*

capitalization of the China-sponsored Asian Infrastructure Investment Bank.³⁴

Security Cooperation

Japan's policy towards South Asia, which remained chiefly economic in character, with particular focus on the ODA, gained security dimension in the post-Cold War period. It was only since 2009 when the Chinese threat began to loom large that Tokyo felt the need to develop security cooperation with the South Asian countries, India in particular. It was projected that the density of traffic of the Straits of Malacca – the biggest ocean highway in the world, which is 675 km away from the island chain of Andaman and Nicobar of India – would register a steep rise from 94,000 ships in 2004 to well over 141,000 ships by 2030. Ninety five per cent of the oil shipped to Japan, South Korea and Taiwan,³⁵ and eighty per cent of China's energy supplies pass through Malacca Straits. Japan is aware that China feels insecure in the Malacca Straits. Bakshi, an Indian war veteran, had pointed out that Beijing was afraid that in the event of hostilities breaking out over the South China Sea or Taiwan, the US, India and Japan might disrupt its trade and oil shipments.³⁶ In view of the 'Malacca Dilemma (a term coined by the Chinese President Hu Jintao in 2003 refers to "the conflicts in the region and their effect on China's geopolitical and energy strategies), China is investing hugely in Pakistan's Gwadar Port. China also invested in Chittagong Port in Bangladesh and Hambantota Port in Sri Lanka. The development of all these ports merely pointed up China's influence in these South Asian nations. Japan, therefore, was convinced that it could no longer treat South

³⁴ "Japan vies with China to fund Asia infra," *Deccan Chronicle*, May 22, 2015.

³⁵ V. Srilatha, "India-Japan Maritime cooperation," in *India-Japan: Towards Harnessing Potentials of Partnership*, ed. Y. Yagama Reddy, (New Delhi: 2012), p.98.

³⁶ G.D Bakshi, "India, Japan Must come Together to Take on Chinese Dragon breathing Military Fire," *The New Sunday Express*, May 29, 2016.

Asia as a low priority area. It was against this background that Japan began to deepen its security ties with the SAARC countries.

The high profile India-Japan strategic partnership began to take a concrete shape in the light of escalation of tensions in China's relations with India and Japan in the early years of the present era. Beijing's aggressive moves at the India-China border and the worsening situation in Japan-China ties in the wake of the military assertiveness of China in the South China Sea and the East China Sea, and the propping up of North Korea and Pakistan as proxies against Japan and India respectively, drove the two largest democracies of Asia into identifying common threat and working in unison to ensure "power equilibrium" which is essential for the regional peace and stability. The declining American role in Asia, which may work to the advantage of China, is causing concern to Tokyo to the extent of compelling it to make its own arrangements to meet the challenge of China.

The congruence of interests between the two Asian majors found expression in various ways. Summit meetings are being held every year since 2005 which facilitate exchange of views and identification of areas of cooperation. At the summit of 2015, Japan pledged to help India realise its aspirations. The Summit of 2016 will go down in the history of India-Japan ties because all the long pending demands of India, such as transfer of nuclear and military technology and the demand for copious investments from Japanese business houses, were met by Tokyo. The growing mutual understanding and cooperation between India and Japan justified the claims that New Delhi and Tokyo are 'natural allies' and 'indispensable partners'.

In 2007, Japan joined Malabar Exercises-an annual affair of the US and India. Though abstained since 2008 in view of Beijing's strong protests, Japan joined the exercises again in 2015 on a permanent basis. The Malabar Exercises, as Harsh V. Pant, a strategic analyst, has pointed out, "reflected a convergence of India's Act East

Policy, Japan's growing focus on freedom of navigation in the South China Sea and the Obama administration's strategic 'rebalance' towards the Indo-Pacific".³⁷ The Japanese Prime Minister Abe was among those who popularized the concept of Indo-Pacific. He also mooted the idea of the US, Japan, Australia and India forming what he called a "Democratic Security Diamond" to challenge ascendant China.³⁸ The coming together of India, Japan, the US and Australia, which was perceived in certain international circles as Asian NATO in the offing, seemed to augur well from the perspective of their defence cooperation and security. But, Australia backed out yielding to Chinese pressure. However, the US-Japan-India trilateral engagement gained momentum and the three countries held their first ever trilateral meeting at the Foreign Ministers level in September 2015. At the same time, India-Japan strategic bilateral cooperation has been growing steadily, not to "contain or encircle" China but to thwart Beijing's designs to dominate the India-Pacific region. Yet, China roundly criticized the other two Asian majors. Whenever India and Japan came together, it has become customary for Beijing to feel piqued. It will not be inappropriate to mention here an interesting remark made by the Foreign Minister of India on May 29, 2013: "China is known to have maintained a close relation with Pakistan. We have never asked it to stop doing so nor have we given up working towards improving ties with Beijing. Similarly, our friendly relations with a country that China may not be comfortable with cannot be seen as a problem".³⁹ Prime Minister Abe was still more blunt. In his book, *Towards a Beautiful Country*, Abe asserted that strengthening of ties with India would advance national interests of his country. He went a step further to declare: "It will not be a

³⁷ Harsh V. Pant, "The breakthrough with Japan," *The Hindu*, November 15, 2016.

³⁸ "China sore over India-Japan ties," *Deccan Chronicle*, May 29, 2013.

³⁹ "Japan Ties won't Worry Anyone," *The Indian Express*, May 30, 2013.

surprise if in another decade Japan-India relations overtake Japan-US and Japan-China ties”.⁴⁰

Japan’s security relations with other South Asian countries were not as deep as they were with India. However, Japan started realizing their strategic importance particularly in the context of its deteriorating relations with China. The two objectives of Japan’s policy towards the war-torn Afghanistan have been security improvement and reconstruction. Hiroyuki Yamaya, Councilor, Embassy of Japan in Brussels, noted: “We believe that we have to prioritize the capabilities of Afghan forces to create a sustainable security environment.” Japan’s most significant initiative in this direction was its contribution of \$ 267 million which helped to disband 737 out of 2000 illegal armed groups that were operating in Afghanistan.⁴¹

Japan’s security cooperation with Pakistan could not grow because of the latter’s growing strategic ties with China. The US Congress Report of November 2016 stated that China was using a “wholly willing” Pakistan to “block India’s position” in the Indian Ocean region and also to “cement its place as the sole leader of Asia”.⁴² Further, the burgeoning India-Japan cooperation had its impact on Japan-Pakistan ties. A Pakistani scholar, hence, remarked: “The Japanese so-called idea of the arc of security and freedom floated in 2006 in cooperation with India and Australia, a leap forward to India in the shape of civil nuclear cooperation, and approving an India-specific concessions for the supply of nuclear plants and parts at the Nuclear Suppliers Group (NSG) in 2008, have sent negative messages to Islamabad about the growing Indo-Japan axis in the

⁴⁰ Kamalendra Kanwar, “After India-Japan Summit,” *The New Indian Express*, June 11, 2013.

⁴¹ <http://www.nato.int/cps/en/natohq/news72931.htm?selectedLocate=en> (accessed October 12, 2016).

⁴² “China using Pakistan to thwart India: US Congress Report,” November 26, 2016, <http://idrw.org/china-using-pakistan-to-thwart-India-us-congress-report/> (accessed November 27, 2016).

region". Islamabad saw in these developments a paradigm shift in Pakistan-Japan relations.⁴³

Bangladesh was perceived as a country under the sphere of influence of China. Therefore, Japan felt the need to enlarge its strategic footprints in Bangladesh. Japan, hence, came up with the Big-B initiative. As part of the programme of development of 'Big-B', in 2014, Japan promised Bangladesh that it would provide \$ 5.9 billion over next five years (2014-2019) to build a deep-sea port and other major infrastructure projects. But, the fact remains that Dhaka's dependence on Beijing is likely to increase after taking delivery of two submarines from China on November 14, 2016 which enables the latter to have its strategic footprints in the Bay of Bengal.

While receiving substantial assistance from Japan, Sri Lanka, like Bangladesh, moved closer to China, particularly during the two consecutive terms of office of President Rajapaksha who valued highly the military help China extended to annihilate the LTTE in 2009. The new government of Maithripala Sirisena, which was formed in January 2015, owed to investigate corruption allegations with regard to the loans totalling \$ 15.56 billion borrowed by former President Rajapaksha from China at an exorbitant rate of interest ranging between 2 to 3.5 per cent for the development of projects such as the Colombo Port City and the Hambantota Port. The bilateral ties of Sri Lanka and China nosedived following the controversial remarks made by the Chinese Ambassador Yi Xianliang, who at a press conference in Colombo, questioned the wisdom of the latter in going for more loans from Beijing when they were "expensive" as claimed by the Sri Lankan Finance Minister Ravi Karunanayake. The remark of the economist and Deputy Foreign Minister, Harsha de Silva, that even 2 per cent is "very high" given the fact that Japanese loans were available at a

⁴³ Ahmad Rashid Malik, "Japan-Pakistan relations," <https://en.wikipedia.org/wiki/Japan%62%80%93Pakistan-relations> (accessed October 21, 2016).

concessional rate of interest of 0.1 per cent, added fuel to the fire.⁴⁴ In any case, the worsening situation in Sri Lanka-China bilateral relations seemed to work to the advantage of Japan which is seeking to increase its relations with Colombo. The net result of the spat was that Sri Lanka, which found it difficult to repay the debt carrying heavy rate of interest, surrendered eighty per cent of its stake in the strategically important Hambantota Port to China.

It is interesting to note that unlike China – which interfered in the internal affairs to destabilise the governments in the South Asian countries such as Nepal, Bangladesh, and Sri Lanka by maintaining a channel of communication with the opposition parties and inviting their leaders to Beijing – Japan dealt with the ruling elite.

Cultural Cooperation

Healthy development of bilateral relations demands “deep and broad based” cooperation in the cultural sphere. Prime Minister Modi, hence, stated, culture and people breathe life into a bilateral relationship.⁴⁵ When the former Indian Prime Minister Manmohan Singh said the people of India had “fondness” for the people of Japan,⁴⁶ he meant that there was supportive environment for the cultural cooperation to grow between the two nations. Cultural relations between India and Japan can be traced to the 6th century A.D. when Buddhism arrived in Japan via China and Korea. The Indian Buddhist monk Bodhisena who arrived in Japan in 736 A.D, remained in Japan spreading Buddhism till his demise in 760 A.D. One of the early Japanese celebrities to arrive in India was Tenjiku Tokubei (‘Tenjiku’ was the Japanese name for India which was regarded as “Heavenly Abode”). Indians fighting for independence

⁴⁴ P.K.Balachandran, “No Paradise for the Dragon,” *The New Indian express*, November 11, 2016; Meera Srinivasan, “Sri Lanka to Summon Chinese envoy over controversial remarks,” *The Hindu*, November 7, 2016; Meera Srinivasan, “Rajapaksha’s visit part of the India-China ‘Great Game’ in Sri Lanka,” *The Hindu*, November 26, 2016.

⁴⁵ *The New Sunday Express*, December 13, 2015.

⁴⁶ *Ibid*, May 28, 2013.

were inspired and enthused by Japan's emergence as a great power following the Meiji Restoration and the victory over Russia in 1905. During the World War II, Japan's extension of the much needed support to Subashchandra Bose struck a chord with the Indians.

Despite a spurt in bilateral ties in the economic and strategic fronts, cultural relations between India and Japan did not prosper. Writing in 1996, Purnendra C. Jain, who worked extensively on Japan's relations with South Asia, pointed out: "Cultural relations are the weakest link in the chain of relationship between Japan and South Asia".⁴⁷ Sadly, the situation remains same till date.

In order to take forward cultural interaction between India and Japan, a cultural agreement was signed in October 1956. Even before this agreement was inked, the Government of India had launched in 1951 a scholarship programme for young Japanese scholars to study in India. Tokyo instituted the Japan-SAARC Special Fund (JSSF) in 1993 to undertake exchange programmes and a variety of other programmes for the benefit of the South Asians.

The JSSF is used to implement the programme of JENESYS-2.0, which was announced by the Prime Minister Abe at the East Asia Summit in the Philippines in 2007. The chief objective of JENESYS-2.0 is to "further strengthen SAARC-Japan relationships through promoting people-to-people exchanges between Japan and the SAARC countries". Under JENESYS-2.0, about 1250 youth from SAARC countries visited Japan for ten days. In their joint statement issued in December 2015 Prime Ministers of India and Japan fondly hoped that the exchanges of this kind "will provide solid bonds for our future relations."⁴⁸ In 1988, the Festival of India was organized in Japan. During 2014-15, a year-long 'Festival of

⁴⁷ Purnendra C. Jain, "Japan's relation with South Asia," *Asian Survey*, Vol. XXXVII, No.4, (April 1997), p. 350.

⁴⁸ http://www.mofa.go.jp/s_sa/sw/in/page3e_000436.html.

India’ was celebrated in Japan. Organisation of these high profile events clearly indicated the deep interest Japan and India exhibited in promoting their cultural cooperation.

In 2009, India established the Vivekananda Cultural Centre in Tokyo which offers classes on Yoga, Tabla, Bharatanatyam, Odissi, Sambalpuri and Bollywood dances, besides courses in Hindi and Bengali languages. In 2012, the 60th anniversary of establishment of diplomatic relations between India and Japan was observed. During Prime Minister Modi’s visit to Japan in September 2016, Prime Minister Abe told the former that he looked forward to the celebration of the 60th anniversary of the signing of Japan-India Cultural Agreement on a grand scale in 2017.

Reflecting India’s goodwill and warmth towards Japan, then Prime Minister Manmohan Singh, in a rare gesture, awarded on May 28, 2013 the third highest national award, ‘Padma Shri’, to eminent Japanese scholar in Tamil language, Noburu Karashima in recognition of his remarkable contribution in the field of literature and education.⁴⁹ On December 12, 2015, the Prime Minister Abe accompanied Prime Minister Modi to watch the famous sacred ‘Ganga Aarti’ at the Dashashwamedh Ghat in Varanasi, the ancient temple town.⁵⁰ In view of its Buddhist connection with India, Japan offered \$ 100 million to rebuild Nalanda University-the world renowned Buddhist centre of learning located in the state of Bihar.⁵¹

Japan’s cultural relations with other South Asian countries lacked depth. Japan’s investment in promoting Japanese language and studies in the SAARC nations is meager compared with that in ASEAN and East Asian regions. Same is the case with the cultural exchange programmes. For want of adequate budget support, the activities of the Japanese NGOs seem to be stuck in limbo.

⁴⁹ *The New Indian Express*, May 29, 2013.

⁵⁰ *Ibid*, December 13, 2015.

⁵¹ Charu Sudan Kasturi, “Nalanda’s fight, yen and now-Promise of global funds eludes varsity,” *The Telegraph* (Kolkata), September 3, 2014.

Japanese TV programmes are popular in East and Southeast Asia and it is not so in South Asia. Japan considers its language as an important tool to spread its culture world over. While Tokyo is evincing greater interest in offering Japanese language education to as many people as possible in the world, South Asia accounts for least number of learners of Japanese language. According to 2012 survey report, there were only 29,081 learners of Japanese language in South Asia while as many as 2,154,344 and 1,32,701 studied Japanese language in East and Southeast Asia respectively. Of the total 3.99 million learners of Japanese languages all over the world, East Asia accounts for 54 per cent and Southeast Asia for 28.4 per cent while South Asia's share was a meager 0.7 per cent which is less than that of Malaysia (0.8 per cent) and the Philippines (0.8 per cent).⁵²

There are a few recognized centers/institutes offering courses in Japanese studies in the SAARC region, but all cannot be rated high. Therefore, there is need for the Japanese government to come forward with initiatives such as setting up a regional institute which will serve as a nodal point for promoting Japanese studies in the region. Tokyo could also make best use of SAARC University in New Delhi to give boost to Japanese studies in South Asia. However, in the light of rising level of Japanese investments in South Asia and the consequent growth in economic interaction, and the burgeoning strategic and security cooperation, one can hope that the need for learning Japanese language will be felt by the increasing number of South Asians in the years to come.

Conclusion

South Asia is a conglomeration of developing and least developed countries which were in need of external financial assistance to develop themselves and promote the welfare of their peoples.

⁵² <https://www.jpfa.go.jp/j/project/japanese/surveyresult/dl/serverly-2012/2012-s-excerpt-e.pdf> (accessed October 3, 2016).

Though devastated during the war, Japan recovered fast to emerge as the second largest economy in the world. Cash surplus Japan also emerged as the largest ODA provider in the world. South Asian countries who were greatly benefited by the ODA, perceived Japan as a caring nation. Growing security threats persuaded Japan to use ODA not only for the socio-economic development but also for addressing the security concerns of the recipient nations. Flexing its economic and military muscle, China, while advocating a multipolar world, has been making a pitch for unipolar Asia dominated by itself. It was against this backdrop that Japan offered “highly concessional yen loans” to India; participated in Malabar naval drills on a permanent basis; developed “dialogue and exchanges” with India in the areas of “security and defense”; involved itself in infrastructural development in India so as to encourage the flow of Japanese investments into India; and concluded the amphibian plane deal as well as the Civil Nuclear deal with India. In the economic front, the bilateral trade has been highly in favor of Japan. Increase in trade volume is not the solution because it has heightened the problem of balance of payments further. At their recent summit in Tokyo in November 2016, the two Prime Ministers, Abe and Modi, resolved to find a viable solution to this nagging problem.

In the security architecture of the Indo-Pacific region, Japan envisioned a major role to be played by South Asia, which is home to one of the three majors of Asia, India, with which Japan’s relations are maturing. Since India alone does not makeup South Asia, Japan accorded due importance to India’s smaller neighbours. As China looms, Japan feels the need for developing strategic cooperation with big as well as small players of the South Asian region. China’s threatening postures demand a collective effort of all the regional countries irrespective of their size.

Japan was well advised to pursue a wise policy whose dominant features were humane and positive disposition, accommodation,

mutual help, and friendly cooperation. On the contrary, China's attitude towards the South Asian countries was marked by assertiveness, highhandedness, exploitation, dictation, domination and coercion.

In the developing situation in the Indo-Pacific region, India needs Japan and Japan needs India. It is on their joint effort depends the regional equilibrium that is essential for ensuring the peace and stability of the Indo-Pacific region which is emerging as the fulcrum of global politics. This will be more so in the event of the US President Donald Trump downsizing the American role further in Asia. It would be absolutely imperative for Japan and India to take on the mantle of containing overgrown China in the interests of the region and the world at large. In that event, South Asia would have a larger role to play. India-Japan partnership would be broadened and deepened to realize their cherished ambition of building a "safer and stable world".

European Union's Capabilities - Ten Lessons for SAARC

*Dr. S. Venkata Krishnan**

Introduction

European Union, one of the results of World War II, is a differently evolving entity and the entire world observes it as a process in that how sovereign countries are acting and reacting to create a platform which is superseding the traditional nation-state based system. There are important experiments as well as events like single market, central bank, single currency, constitutional treaty and Britain's exit in the evolutionary history of European Union. Thus, EU has been experiencing changes in its membership, consolidation in its actorness and crises in its economy and finance in the milieu of complex international environment and thus providing opportunities for scholars to contemplate over it and its implications on international system. In this context, this script is interested to describe some capabilities like demography, socio-cultural, economic, trade, defence, science and technology and governance of European Union. After that, how SAARC could take lessons from each of these capabilities for its journey towards further cooperation is discussed as conclusion.

EU's Capabilities

Demography

The population of the EU-28 in 2012 was 508 million inhabitants and approximately 7 % of the world's total.¹ This number is really an asset for Union with the following positive indicators. Firstly, life expectancy at birth in European Union (EU) member states has

* Lecturer, Pandit Deendayal Petroleum University, Gandhinagar, Gujarat.

¹ https://europa.eu/european-union/about-eu/figures/living_en (Accessed on: December 2, 2016).

increased to reach 79 years in 2010.² There has been progress in the treatment of life-threatening conditions such as heart attack, stroke and cancer in European countries. Most European countries have reduced tobacco consumption and alcohol consumption has also fallen in many European countries. Secondly, Europeans cherish, despite their differences in national levels, some of the highest literacy rates in the world. For example, across EU countries, 91% of 15-19 year-olds were in education in 2012, compared with the OECD average and the United States average of 86%. There are proportionally more women than men at all other levels of education except in the doctoral level of education.³ This is due to extensive public education and health systems in European countries. This condition about education, health and social welfare contributes to Europe seeming noticeably different to much of the world.⁴ However, there are demographic concern within the European Union and particularly about health and education. The European Union has been facing unprecedented demographic changes such as an ageing population, low birth rates, changing family structures and migration.⁵ There is a gap in the life expectancies between EU member states. Obesity tends to be more common among disadvantaged social groups, and especially women. The economic crisis has also affected the mix of public and private health financing in some countries. In 2012, 124.5 million people, or 24.8 % of the population, in the EU were at risk of poverty or social exclusion.⁶ A large proportion of these people are women and children. Moreover, some communities are

² <http://dx.doi.org/10.1787/9789264183896-en> (Accessed on: December 2, 2016), 7.

³ https://www.oecd.org/edu/European%20Union_EAG2014%20Country%20Note.pdf (Accessed on: December 2, 2016), 3.

⁴ Ian Manners, "The constitutive nature of values, images and principles in the European Union," in *Values and Principles in European Union Foreign Policy*, ed. Sonia Lucarelli and Ian Manners (Oxon: Routledge, 2006), 23.

⁵ <http://ec.europa.eu/social/main.jsp?catId=502>(December 2, 2016).

⁶ <http://ec.europa.eu/eurostat/en/web/products-press-releases/-/3-05122013-AP> (December 2, 2016).

facing huge problem. For example, one of the largest and most disadvantaged groups of people in Europe is the Roma community. They made up of around 10–12 million people, 80 % of whom are at risk of poverty and over 70 % of the Roma population have a lower than primary school level of education. The challenges faced by them include poor education, unemployment, bad housing, social exclusion, and discrimination.⁷ Hence, it is clear that, the present demographic situation creates fewer commitments for European Union.

Socio-Cultural

European social capability is characterised by its reference to 'solidarity.' European social model believes in an encompassing social legislation, social welfare and social infrastructure investment. Although most authors agree that there is no one 'European social model' there is a strong argument that high levels of spending, broad social programmes and considerable employment protection are found across Europe. Additionally, a solidaristic wage policy, detailed social security provisions and good social investment in human and social infrastructure capital are all seen to be part of these European social models. European social capability is located in a certain normative core of social liberalism perspective and still provides a formative background for social solidarity. The observations like EU's public expenditure on social welfare is the highest in the world, the average level of women's empowerment is higher in European Union and social legislation is one of the few fields in which Europe is a real world leader lead to the argue that Europe has high social capability.⁸ This high social capability is not uniform throughout the European Union. In particular Northern and North-Western Europe (Denmark, Sweden, France, Belgium, Austria, Germany, and

⁷ European Commission, *The EU explained: Employment and social affairs* (Luxembourg: Publications Office of the European Union, 2014), 4.

Finland) are relatively developed welfare states and the Eastern Europe (Latvia, Lithuania, and Slovenia) are developing states.⁹ The incipient challenge for European Union's socio-cultural capability is the fissure between liberalism and multiculturalism is opening just as the continent undergoes its most momentous population shift. Presently, immigration obviously hits a national security nerve, but it also raises economic and demographic questions like how to cope with a demonstrably aging population and how to maintain social cohesion.¹⁰

Economy

European Union is based on the concept of a social market economy¹¹ and is one of the undisputed giants of world economy.¹² 'The establishment of a European currency union with the adoption of the euro as the single currency for millions of EU citizens is arguably the single most important (economic) accomplishment of the European Union.'¹³ Average GDP per capita in the EU remains among the highest in the world (with Luxembourg having the highest) and among the developed world, average EU inequality is higher than that of Japan and Canada, but lower than the US, New Zealand, and Australia. In comparison, average EU relative poverty levels are the lowest in the developed world.¹⁴ Before the economic crisis of 2008, GDP per capita in the EU was continually on the rise with an average growth of 2.4%.

⁹ Ian Manners, "The constitutive nature of values, images and principles in the European Union," in *Values and Principles in European Union Foreign Policy*, ed. Sonia Lucarelli and Ian Manners (Oxon: Routledge, 2006), 23.

¹⁰ Robert S. Leiken, "Europe's Angry Muslims," *Foreign Affairs*, Vol. 84, no.4 (2005):120-135.

¹¹ European Commission, *The EU explained: Employment and social affairs*, (Luxembourg: Publications Office of the European Union, 2014), 3.

¹² Jens Ladefoged Mortensen, "The World Trade Organization and the European Union," in *The European Union and International Organizations*, ed. Knud Erik Jørgensen (New York: Routledge, 2009), 80.

¹³ Leila Simona Talani, "Introduction," in *The Future of EMU*, ed. Leila Simona Talani (Hampshire: Palgrave Macmillan, 2009)

¹⁴ *Ian Manners*, note 10, p.21.

This trend was interrupted by the sudden economic slump, which started in 2008 and fully hit the EU in 2009 with the economy started to shrinking and growth prospects remained uncertain.¹⁵ The following paragraphs will reveal the status of the three sectors of European Union's economy:

*'The share of agriculture in the EU-27 gross domestic product (GDP) is just under 3%; but the sector is the principal source of income for around 20% of its population, which live in predominantly rural regions that would be devastated without its contribution. Moreover, the combined agricultural and food sector forms an important part of the EU economy, accounting for 15 million jobs (8.3% of total employment) and 4.4% of GDP. The EU is the world's largest producer of food and beverages, with combined production estimated at EUR 675 billion. Finally and most importantly, the self-sufficiency of the EC/EU in basic agricultural products is vital, not only for the wellbeing of its citizens, but also for the political independence of its Member States. The economic, social and political importance of agriculture is, therefore, much greater than its share in the GDP of the Union.'*¹⁶

Europe is a world-leader, in many strategic sectors of present day, such as automotive, aeronautics, engineering, space, chemicals and pharmaceuticals. Industry still accounts for 4/5 of Europe's exports. EU industry is also a world-leader in tomorrow's technologies like highly energy and material-efficient processes. EU industry employs renewable and recycled materials, and increasingly adopts sustainable business models such as industrial

¹⁵ http://ec.europa.eu/eurostat/statistics-explained/index.php/Sustainable_development_socioeconomic_development (Accessed on: May 18, 2015).

¹⁶ http://www.europedia.moussis.eu/books/Book_2/6/21/?lang=en&all=1&s=1&e=10 (Accessed on: December 2, 2016).

symbiosis to recover materials and dissipated heat and energy. In these technologies, EU's world market share is of over 35% and a patent share of over 50%.¹⁷ 'However, the continuing economic crisis has put Europe's industry under pressure: production is 10% lower than before the crisis and over 3 million industrial jobs have been lost. Consumer and business confidence are low. Problems in the banking sector make it difficult to access finance. Investments are held back and factories are under pressure to close.'¹⁸

The service sector is the largest employer in the EU and is also the main resource of new employment opportunities in European economies.¹⁹ Service activities are important for EU growth for many years and the contribution of services to yearly EU growth in terms of value added is better than that of industry.²⁰ However, the EU's services markets are mainly national and markets are small. Europe's services firms do not face adequate competition and productivity growth is slow.²¹ The services sector is also not uniform in the European Union member states. Also in this sector, EU has few R&D leaders and especially EU services sector R&D is less when compared to the United States.

International Trade

The EU is in most important position when it comes to global trade. The EU has accomplished a well-built position by acting jointly with one voice on the global stage, rather than with individual trade strategies for each member states. After the Euro

¹⁷ <http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0582&from=EN>(Accessed on: 2012).

¹⁸ http://publications.europa.eu/resource/cellar/2da99804-f6b6-428e-b290-1f50e5dbd148.0013.02/DOC_1(Accessed on: December 2, 2016).

¹⁹ Gintare Kemekliene and others, *Services employment in Europe (European Trade Union Institute-Reports, 2007)*

²⁰ Federica Mustilli and Jacques Pelkmans, "Securing EU Growth from Services," (*CEPS Special Report No. 67, 2012*).

²¹ John Springford, *How to build European services markets?* (London: Centre for European Reform, 2012), 1.

crisis also, although growth has anticipated to be slow, the EU remained the biggest economy in the world with a GDP per head of €25 000 for its 500 million consumers. Europe is the world's principal exporter of manufactured goods and services, and is itself the largest export market to many countries. The EU has been the top trading associate for 80 countries while US is the top trading partner for a little over 20 countries.²² In 2013, EU has also started negotiating free trade agreements with two strategic partners: with US (The Transatlantic Trade and Investment Partnership (TTIP)) and Japan. The aim is to go beyond the classic approach of simply removing tariffs and to open markets for investment, services and public procurement as well.²³ The EU also tops in ranking in both the incoming and out flowing international investments.²⁴

Defence

The EU scores high on most of capabilities like a strong economy and a strong diplomatic/political capacity and presence except the military dimension.²⁵ The average EU military expenditure is above that of most of the world, but significantly below that of the five militarised states of Pakistan, Russia, the USA, China, and India.²⁶ In terms of capabilities, one could argue that the EU might not be the most admirable organisation for carrying responsibility for security and defence when weigh against with such dedicated

²² <http://ec.europa.eu/trade/policy/eu-position-in-world-trade/> (Accessed on: December 2, 2016)

²³ http://ec.europa.eu/economy_finance/international/globalisation/international_trade/index_en.htm (Accessed on: December 2, 2016).

²⁴ <http://ec.europa.eu/trade/policy/eu-position-in-world-trade/> (Accessed on: December 2, 2016).

²⁵ Henrik Larsen (2002) "The EU: A Global Military Actor?" *Cooperation and Conflict: Journal of the Nordic International Studies Association*. Vol. 37(3).pp283-302.

²⁶ Ian Manners, "The European Union's normative strategy for sustainable peace," in, *Strategies for Peace –Contributions of International Organisations, States, and Non-State Actors*, eds.Volker Rittberger and Martina Fischer, (Opladen: Barbara Budrich,2008), 136.

organisations like NATO.²⁷ One of the reasons for this weakness is due to a section of European elite's influence on European Union's defence arrangements. The European Security Strategy (ESS) calling for new investments in armaments and defence has stirred up unenthusiastic responses from the academic community that supports the EU's image as a civilian actor.²⁸ Despite these issues, the European Security and Defence Policy interested to make stronger the EU's external ability to operate through the development of civilian and military capabilities in Conflict Prevention and Crisis Management.²⁹ EU's defence capability is a significant one, if we consider the member states defence capabilities. France is a nuclear weapon state. European Union member states are not only major arms manufacturers but, also important exporters of arms and other weapon systems. The European Defence Agency, established in the year 2004, assist the Member States and the Council in their attempt to improve European defence capabilities. The importance of this agency is that, even non-EU countries are also participating in the ascribed functions which include strengthening the defence technological and industrial base.³⁰ Moreover, the EU's partnership with NATO and the understanding they have reached that, "*reinforcing development of military capability requirements common to the two organisations*"³¹ and obligations of NATO for EU's defence, expressed in various documents, increase the credibility of

²⁷ Hanna Ojanen, "The EU's Responsibility for Global Security and Defence," in, *A Responsible Europe? - Ethical Foundations of EU External Affairs*, eds. Hartmut Mayer and Henri Vogt (New York: Palgrave Macmillan, 2006), 37.

²⁸ *Ibid*;p.46.

²⁹ https://eeas.europa.eu/topics/common-foreign-security-policy-cfsp/420/common-foreign-and-security-policy-cfsp_en (Accessed on: December 2, 2016).

³⁰ <http://www.eda.europa.eu/Aboutus/Whatwedo/Missionandfunctions> (Accessed on: December 2, 2016).

³¹ <http://www.nato.int/docu/pr/2002/p02-142e.htm> (Accessed on: December 2, 2016).

European Union as a security political agent in the international system.

Science and Technology

EU is the undeniable world leader for publications recorded in the Science Citation Index (SCI).³² Deep economic recession had not affected the research and innovation in European Union and S & T remains alive and well in Europe.³³ To make Europe a world-class performer in science and to help get the European economy back on track, EU has initiated Innovation Union.³⁴ However, 'only a few EU Member States, mainly in western and northern Europe, have large-scale and visible scientific and technological capacity in areas such as health, new materials, energy, environment, ICT and biotechnologies.'³⁵ EU, with its juxtapositioned research systems of Member States with few interactions between them, had not adequately equipped to confront science and technological challenges from America and Japan in the age of Knowledge Economy.³⁶ EU is also struggling to increase expenditure on R&D and develop innovation.³⁷ Apart from that, there is diversity in policy positions related to science and technology. For example, there are at present 152 nuclear facilities located in 15 of the EU

³² Susan Schneegans (Ed.), "UNESCO SCIENCE REPORT 2010 - The Current Status of Science around the World," (UNESCO Publishing, 2010), 23.

³³ European Commission, *Research and Innovation performance in EU Member States and Associated countries* (Luxembourg: Publications Office of the European Union, 2013), 1.

³⁴ European Commission, *Innovation Union – A pocket guide on a Europe 2020 initiative* (Luxembourg: Publications Office of the European Union, 2013)

³⁵ European Commission, note.33, p.11

³⁶ Robert Boyer, "From the Lisbon Agenda to the Lisbon Treaty: national research systems in the context of European integration and globalization," in, *European Science and Technology Policy: Towards Integration Or Fragmentation?*, eds. Henri Delanghe, Ugur Muldur and Luc Soete (Cheltenham: Edward Elgar Publishing, 2011)

³⁷ <http://unesdoc.unesco.org/images/0018/001898/189883E.pdf> (Accessed on: December 2, 2016), 23.

member states, providing about one-third of its electricity.³⁸ Traditionally, countries without nuclear facilities for example, Luxembourg, Ireland, Denmark and Austria, have strongly opposed nuclear power development. At the same time, the countries that were already strong supporters of nuclear energy Slovakia, the United Kingdom, Finland and France among others repeated their support of nuclear energy. Countries that were new to nuclear energy had a mixed reaction, for example, Italy.³⁹ Notwithstanding, the diversity of positions, there is consensus within the EU's ranks to pursue common science and technology policy like to strengthen nuclear safety.⁴⁰

Governance

EU is still a regional organisation composed of 27 countries.⁴¹ The governance capability of European Union is divided into two categories I. Domestic and II. External

I. *Domestic*: 'Modern European Union governance is multilevel and polycentric in nature. Most of the EU member states are federal states and which are unitary states they have also entered into a process of federalisation, quasi-federalisation or large scale regionalisation. Thus a decentralising phenomenon occasionally referred to as new federalism⁴² is taking place inside European Union. The pooling of sovereignty within Europe has made all European states, and in particular EU members, far more tolerant

³⁸ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007AE0990&from=EN> (Accessed on: December 2, 2016), 52.

³⁹ Caroline Jorant, "The implications of Fukushima - The European perspective," *Bulletin of the Atomic Scientists*, Vol. 67, no. 4 (2011):15.

⁴⁰ *Ibid*; p.17.

⁴¹ Adrian van den Hoven, "European Union regulatory capitalism and multilateral trade negotiations," in, *Values and Principles in European Union Foreign Policy* ed. Sonia Lucarelli and Ian Manners (Oxon: Routledge, 2006), 187.

⁴² Christine Leitner (Ed), *eGovernment in Europe: The State of Affairs* (Maastricht: European Institute of Public Administration, 2003), 15.

of post-national politics in the 21st century.⁴³ European society is experiencing revolution and progression in basic government structures, cutting through the conventional red tape and bureaucracy. EU, more than any other international actor, has also matched its commitments by developing a legal basis for promoting human rights and democracy promotion, and has equipped itself with sets of tools for this purpose.⁴⁴ Now, 'clearly there is a trend to remove command and control from the top and replace it with people-centred, responsive and flexible structures reacting to the real needs of society. A pan-European transformation is taking place from the traditional authority structures of a state-centred society, to a more flexible, market-responsive open society.'⁴⁵ Europeans enjoy intense and energetic international civil societies in some measure because of their moderately internationalised public spheres. Despite recent increases in the synchronisation of public policies among these member states, common institutional and policy designs have not yet fully emerged in the EU and certain significant differences remain among the member states of the EU with respect to quality of governance.⁴⁶ The Britain's exit referendum is recent major stumbling block for not only external but also for EU's domestic governance in the Union.

⁴³ J. Rabkin, "Is EU Policy Eroding the Sovereignty of Non-Member States?" *Chicago Journal of International Law*, Vol. 1 (2000): 273-290 and I. Ward, "The End of Sovereignty and the New Humanism," *Stanford Law Review*, Vol. 55 (2003):2091-112.

⁴⁴ Sonia Lucarelli, "Introduction," in "Values and Principles in European Union Foreign Policy," ed. Sonia Lucarelli and Ian Manners (Oxon: Routledge, 2006), 16.

⁴⁵ Christine Leitner (Ed), *eGovernment in Europe: The State of Affairs* (Maastricht: European Institute of Public Administration, 2003), 59.

⁴⁶ Bogdan Dima, Stefana Maria Dima & Oana-Ramona Lobont "New empirical evidence of the linkages between governance and economic output in the European Union," *Journal of Economic Policy Reform*, Vol. 16, no.1 (2013): 68-89.

(II) *External*: Unlike countries, the European Union does not carry out its foreign relations according to a single pattern. 'Even after decades of integration process, the European Union's representation in international institutions still varies significantly.'⁴⁷ As far as geographical scope of EU's external policies is concerned, almost all parts of the world are the objects of EU policies.⁴⁸ EU's external policies are extensive and cover security, trade, development cooperation, and human rights. EU tends to export to the international system the EU's domestic political and socio-economic development model which is based – inter alia – upon democratic principles, minority rights, equal opportunities and solidarity. The EU assumes that the EU model will also prove successful in third countries, as it did first in Western Europe and more recently in Eastern Europe. This is even truer in the post-Cold War era which has experienced the failure of the political and economic communist model of development. For this reason, principles and values such as liberty, fundamental freedoms, democracy, human rights, the rule of law and good governance are included in EU official documents and international agreements as a key dimension of EU foreign policy. There is also an assumption that poverty can only be eliminated with the help of responsible governments and functioning democratic institutions.⁴⁹ The EU directly dispenses over €7 billion every year in foreign aid assistance, making it the world's most

⁴⁷ Sieglinde Gstöhl, "'Patchwork Power' Europe?-The EU's Representation in International Institutions," *Bruges Regional Integration & Global Governance Papers 2/2008*, (2008)

⁴⁸ Henrik Larsen, "The EU: A Global Military Actor?," *Cooperation and Conflict: Journal of the Nordic International Studies Association*, Vol. 37, no.3(2002):283-302.

⁴⁹ Cited by Stefania Panebianco, in, "Promoting human rights and democracy in European Union relations with Russia and China," in, *Values and Principles in European Union Foreign Policy* eds. Sonia Lucarelli and Ian Manners (Oxon: Routledge, 2006), 131.

noteworthy donor. More than 150 countries and territories of the world are benefiting through the EU's aid and assistance.⁵⁰

*"EU has developed a legal basis for promoting human rights and democracy abroad, has formalised its commitments in its treaties and foreign policy objectives, and has equipped itself with sets of tools for this purpose....The degree to which it has incorporated principles of human rights and democracy are part of the model that the EU presents to the world, even though they are not always or necessarily resorted to in the actual politics of its external relations."*⁵¹

This contradiction remains one of the major hindrances in the EU's self-portrayal as a principled actor.⁵² Thus, European Union is taking great effort to resolve its 'civilian power' roots with the acknowledgment that force has a role to play in the creation and maintenance of international peace.⁵³

European Union and UN

Over the years the European Union's presence at the UN has grown and in 1974, it was accorded observer status at the 29th General Assembly.⁵⁴ EU is working with all UN institutions, agencies and

⁵⁰ http://europa.eu/rapid/press-release_IP-07-351_en.htm?locale=en (Accessed on: December 3, 2016)

⁵¹ Rosa Balfour, "Principles of democracy and human rights - A review of the European Union's strategies towards its neighbours," in, *Values and Principles in European Union Foreign Policy eds. Sonia Lucarelli and Ian Manners* (Oxon: Routledge, 2006), 127.

⁵² *Ibid*; p.115.

⁵³ Sonia Lucarelli and Roberto Menotti, "The use of force as coercive intervention- The conflicting values of the European Union's external action," in, *Values and Principles in European Union Foreign Policy eds. Sonia Lucarelli and Ian Manners* (Oxon: Routledge, 2006), 160.

⁵⁴ European Union, *The Enlarging European Union at The United Nations: Making Multilateralism Matter*, (Luxembourg: Office for Official Publications of the European Communities, 2004), 8.

programmes across almost the whole range of UN activities, from development plan and peace building to humanitarian assistance, environment, human rights, and culture. At present, nearly 35% of the UN usual budget and 36.8% of the UN peacekeeping budgets and about one-half of all the voluntary contributions to UN funds and programmes are provided by European Union and its Member States.⁵⁵ Thus, EU and its Member States collectively is the single biggest financial contributor to the UN system. In 2011, post-Lisbon period, EU's external capability a reached historic point and now it is possible to present common positions of the Union to the General Assembly.⁵⁶ However, 'there is a dualism in EU in its relations with the UN: it recognizes the pre-eminence of the UN but also lays down its own values or conditions for cooperation.'⁵⁷ Thus, EU is demanding to upload its norms and values while working with (in) international organistaions.⁵⁸

Lessons for SAARC

SAARC, the grouping of eight states in the South Asian region, is many times pondering to replicate European Union model in this part of world. However, the above discussed capabilities of European Union could provide the following lessons for SAARC to have better arrangement in this part of world.

1. EU has been affordable to do many integration related experiments because Europeans possess better quality of life when comparing many regions. Even though qualitatively better

⁵⁵ http://eu-un.europa.eu/articles/en/article_458_en.htm (Accessed on: December 09, 2014)

⁵⁶ <http://www.consilium.europa.eu/en/policies/unga/> (Accessed on: December 3, 2016)

⁵⁷ Alexandra Novosseloff, *EU-UN Partnership in Crisis Management: Development and Prospects* (New York: International Peace Academy, 2004), 7-8.

⁵⁸ Amandine Orsini (ed.), *The European Union with(in) International Organistaions – Commitment, Consistency and Effects across Time* (Surrey: Ashgate, 2014), 8.

population may not an assurance for integration however it is desirable to have such one. This is because this may help the SAARC countries to focus externally more than issues related to domestic population.

2. The socio-cultural capability of EU has been better than many regions of the world. However, now the socio-cultural capability of EU is under stress particularly because of immigration and that gives a lesson to SAARC. Even though many of the South Asian countries are having heterogeneous society and witnessed immigration earlier in the form of refugees, however, for example if there will be a large migration due to increase in the sea-level, SAARC needs a better plan for absorbing immigrants into the society.

3. The agriculture sector's contribution to GDP is not important in respect of EU, however, it is the political importance and because of that EU always tries to preserve its interest in multilateral negotiations. Thus, SAARC needs a forceful voice to defend South Asia's interest in agricultural negotiations in multilateral forums. This forceful and united voice may help in collective identity building in South Asia.

4. The manufacturing capability of EU is high and it includes future technologies. So, EU will try to keep its edge in these technologies. SAARC countries may not immediately to reach such position in this sector and hence a collective bargaining, under SAARC, with EU/European countries or with other technological powers is need of the hour.

5. The importance of market size i.e. more than national market in respect of service sector has been expressed in the EU context. This is very important for SAARC also. For example, in the tourism sector, countries like Bangladesh, Bhutan, Maldives, Srilanka and Nepal could make India as a 'base airport' for

travellers from rest of the world. This will only be possible by better coordination in SAARC.

6. The EU's superior position in international trade is by its united position and this teaches the age old lesson to SAARC i.e. unity is strength. EU's ambitions like TTIP will also increase its capability. So, SAARC also needs coherent trade strategy to compete in international trade.

7. The defence capability of EU is largely lesser than important powers like Russia and makes EU vulnerable to an extent from traditional threats. However, the present day threats are more from non-state actors and this made EU to have NATO's support to enhance its defence capability. In the changed times, SAARC needs a thinking to have an informal relationship with organisations like NATO.

8. EU's science and technology capability needs improvement to compete with US and Japan. For that, further S&T integration steps like Innovation Union is taking place in the European Union. SAARC could also move in this direction by bringing together South Asian countries top R&D institutions particularly in health, basic sciences, space and IT.

9. The decentralisation or new federalism process inside European Union is a positive response to European peoples' aspirations. The improvements in administration in the European Union are also increasing capability of EU. However, the Brexit is going to a challenge for Union. SAARC should look EU's new federalism and administrative improvements to reduce governance crises in South Asian countries and by that SAARC can move in further cooperation. The important lesson for SAARC is coming through Britain's exit from Union. It reveals that SAARC should enhance cooperation but need not to go for integration.

10. EU has developed 'actorness' through an active external governance capability. Moreover, its ability to upload norms and

values by working with(in) international organisations like UN gives a lesson that SAARC should also develop an actorness while working with(in) international organisations. This actorness for SAARC is possible by having cooperation and coordination among SAARC member states.

**‘SAARC can learn from ASEAN’:
Kishore Mahbubani**

Interview conducted by *Suhasini Haidar J**,

The Hindu, India, January 24, 2018

One of Singapore’s best known diplomats and now an academic, Kishore Mahbubani’s latest book *The ASEAN miracle* advocates a Nobel peace prize for the regional grouping. Ahead of the ASEAN-India 25th year commemorative summit to be held this week, with all 10 leaders of the Association as chief guests at Republic Day, Professor Mahbubani says SAARC has much to learn from ASEAN’s success.

You have called ASEAN a miracle and even recommended the Nobel peace prize for the grouping. Why?

The key point is that regional organisations are designed to fail. Because you are getting together a group of neighbouring countries, so it’s not a grouping of choice, but an accident of geography. Most neighbours have a long history of feuds and problems, so they have to overcome the challenges of history to come together, and hence don’t do well. Except for maybe the European Union and ASEAN, and for the EU it took two major world wars before they decided to stop fighting.

ASEAN has achieved the same level of peace and prosperity without going to war, as the Europeans did. At the same time there is no other region on Planet Earth that is so diverse. You have 600 million people, of which 214 million are Muslim, 110 million are Christian, 150 million are Buddhist...even within the Buddhists you have Mahayana and Hinayana sects, then you have Taoists,

* Deputy Resident Editor & Diplomatic Affairs Editor, *The Hindu*.

Confucionists, Hindus, Communists, there is such amazing diversity.

When it was born in 1967, South East Asia was by far the most troubled place on earth. There were more bombs dropped in Indo-China (Vietnam, Cambodia and Laos) than all of Europe in World War II. And we overcame all that and created a community that is today so peaceful.

If you could achieve this level of prosperity in South Asia, with India and Pakistan's problems, or in the Middle East with the Saudi Arabia-Iran rivalry, people would say, what a miracle, you should get a Nobel Peace Prize. ASEAN has achieved that.

Isn't ASEAN divided too today, amidst pro-US and pro-China camps?

Look, ASEAN countries have diverse views on many things. Take for example, the Israel-Palestine issue. Indonesia, Malaysia and Brunei don't have diplomatic relations with Israel, but Singapore has a very close relationship with Israel. Between U.S. and China, I would say there is a spectrum of views. Some like Cambodia maybe more pro-China, Vietnam is more pro-America. But at the same time Vietnam's number one trading partner is China. In 1979, the border between China and Vietnam had one million soldiers on each side confronting each other. Today, they are gone. So all ASEAN countries have different positions on US and China, but they make efforts for good relations with both.

You've famously said that ASEAN was started because of a 4-letter word: Fear, meaning fear of Communist China overrunning them in the 1960s and 1970s. Does that fear still guide them?

The fears that we had in the 1960s was because of the spread of communism, and if you remember Russia and China were together. China referred to the creation of ASEAN as a neo-

imperialist plot. Things only turned around after the US-China Nixon détente, and then China normalised relations with all ASEAN countries. Today it is not so much the fear of China, but the fear that the US-China geopolitical rivalry will divide ASEAN.

You write that the US's choices with China in the Indo-pacific are to "pivot, poison or to make peace". What does that mean?

Well, I believe the biggest mistake the U.S. could do is mount some kind of containment policy of China. All China's neighbours would be uncomfortable to join the US in this, and even Japan would be very cautious. They want to balance and hedge against China, but not contain China. The US also gives mixed signals: on the economic front they have good relations, but on the military front, the US navy undertakes fairly aggressive patrolling close to China's shores. If America continues this, the Chinese navy may begin aggressive patrolling along California's shores. Instead, given new surveillance technology, they should create a new conduct code for patrolling.

To turn to the ASEAN-India relationship. You were a key diplomat when India was inducted as a dialogue partner 25 years ago, and Singapore is given credit for that. All these years later, do you think the promise of the relationship is being realised?

First, I would say it was then-PM Goh Chok Tong who pulled off the Indian induction, and I've written in the book about how the decision was taken to make India a dialogue partner, despite pressure not to unless Pakistan was included too. However, I do think the ASEAN-India partnership has not done as well as the other dialogue partnerships with US, [South] Korea, Japan, and Australia.

What would you advise the ASEAN 10 and Indian leaders when they meet this week for their commemorative summit- what should they commit to doing right away?

The ASEAN-India relationship is not just 25 years, it's a few thousand years old, and it is important that the leaders draw from the deep well of history to build ties. Nine out of the ten ASEAN countries, all except Vietnam, have an Indian cultural base. Even when the Philippines, a 90% Catholic country hosted the East Asian summit in November last year, it opened with a Ramayana performance. Most Indians are so ignorant and unaware of these links however. The second thing to push for is more flights between ASEAN and Indian countries, to facilitate people to people exchanges.

How important is the Regional Comprehensive Economic Partnership (RCEP) to improving ASEAN-India trade ties, especially given the Indian government's misgivings on the free trade agreement?

Well an American diplomat said publicly last week that the US knew RCEP could not be concluded within a year because they know how tough Indian trade negotiators are. I think India now needs to make a careful calculation. It will have to pay a short-term economic price for joining RCEP, but at the same time, if RCEP were formed without India, then the Indo-Pacific idea would be dead. Because if this entire region including Japan, China, S.Korea, Australia and ASEAN come together and form a thriving economic group but India is not a part of it, then what will the Indo-Pacific mean? Indo-Pacific can only succeed as a concept if India trades as much with the East Asian region as the East Asian region trades with itself. The purpose of RCEP is to draw India closer to East Asia. India may need to negotiate bilateral exemptions with China in order to join RCEP, but with ASEAN you must push for more trade.

Is there a danger of India being left out of RCEP? The government's stand is not just about access to Chinese goods, but also about ASEAN reluctance on Indian services.

At some point, if India becomes the one country delaying an agreement on RCEP, then yes. ASEAN countries work on the “minus-X” principle. For example, when ASEAN was formed, Cambodia, Laos were not ready, so we said, we will go on first, and you can join later. There is a desire for the other countries to go ahead with RCEP, as there is a need for integration within the region, and they may just tell India they are going ahead.

The Indo-Pacific concept you referred to received a boost from the revived “Quad” meeting between India-US-Australia-Japan last year. How do you see the Quad?

I think you have to separate the Indo-Pacific idea from the Quad, as they are not necessarily the same. Indo-Pacific includes the region from the US to India including South East Asia and China. Whereas the Quad is confined to four countries on the periphery. It is an unusual marriage, a marriage of convenience for now.

A year into the Trump presidency, what is its impact on Asia?

There were huge concerns when President Trump took over, as he had threatened to declare China a currency manipulator, he said he would make Japan and South Korea defend themselves, and had a heated exchange with the Australian PM. So both competitors and US allies were worried. But then we discovered his bark is worse than his bite. In terms of policies Trump has been remarkably consistent, even on North Korea. There has been no war, and the US is backing talks still.

I ask because your next book is called “Has the West Lost it?” Is that about the worry of an American in decline, retrenching positions worldwide?

A: The US is not going to decline in absolute terms, and its GNP will keep growing. But in the 1960s, American GNP was 40% of the world GNP, and now that is down to 15% in purchasing power parity terms. It’s a very different world as a result. The US is

number 2 compared to China, and soon could be number 3 to India. The Americans have great difficulty planning for this world, because they cannot accept that they are second to anyone. They ignored Bill Clinton when he said in 2003 that if America will be world number 1 for always, it should carry on. But if it isn't then it should consider a world about rules and multilateralism more. Else they won't be prepared.

If China and India are number 1 and 2 in the future, then will the Asian century inevitably be about their competitive rivalry?

[The then] PM Manmohan Singh said the world is big enough for both China and India to grow and he was right.

You spoke of the ASEAN miracle. How can South Asia emulate its success, given that the SAARC countries haven't even been able to meet for years?

I think the one big lesson from ASEAN is that having regular meetings makes a huge difference to trust levels. I attended the initial ASEAN meetings with five countries in 1971, and the level of distrust was very high. Twenty years of meetings later, there was a world of difference. SAARC should consciously study ASEAN and build a habit of regular meetings at all levels. ASEAN has 1000 meetings a year on all kinds of issues. Health, infections, pandemics, are a common problem, for example. SAARC must build on these common areas.

India says SAARC cannot meet until Pakistan addresses the most common problem of the region: terrorism. How does one get beyond that?

It's a question of what comes first. At ASEAN, Philippines claimed the island of Sabah, and Malaysia could have said we will not talk until the Philippines withdraws its claim. Now everyone has forgotten about it. ASEAN's biggest strength is its culture of pragmatism. We look for solutions. Many said we should not have

admitted Myanmar as it was ruled by the military. But we admitted Myanmar, and over time, it changed. So countries can change their behaviour because they become part of a regional coalition.

Another challenge to SAARC has come from China's Belt and Road Initiative (BRI), where except for India and Bhutan, every South Asian country has joined. How can India counter China's money power in the region?

The best way for India to counter China's influence in South Asia is..to increase India's influence in South Asia. In theory, India should be in a much better position to have better relations with every SAARC country than China has. Even if you leave aside Pakistan, which is a dysfunctional relationship, there is so much in common with every country in the region. If you look at China and Taiwan, they both claim to be the same country, and yet they have a massive trade and investment relationship. So while technically they may be inimical to each other, economically they are practically fraternal. This is what India must do with Bangladesh, Sri Lanka, Maldives etc. Integrate them so closely economically, that they will always have to consider India's views.

It sounds easier said than done.

A: You know, I actually said ASEAN was created because of three 4-letter words, not just Fear, but also Luck and Golf (laughs). Seriously, it is important for leaders and officials of countries to spend time together, because that is an important way to understand our commonalities and to break down the animosities that two countries feel. In addition, as the biggest country in the region, India should study Indonesia's role in ASEAN. President Suharto was wise enough to say, we will let the smaller countries of ASEAN run the group, and took a backseat, and that is something India could try to do. Maybe sometimes that group will take decisions you don't like, but eventually the group will come closer together.

A Nepal-India win-win

*Kanak Mani Dixit**

The Hindu, India, February 20, 2018

Without doubt, like every nation-state, India seeks its own advantage in international relationships, including within the South Asian region. But the repeated experience is that of New Delhi generating animosities, with attitudes and actions that go against its own interests. This forces one to ask from nearby Kathmandu, is there a structural issue with India's foreign affairs oversight — or is this question itself taboo?

Take the case of Nepal, a country where friendship with India comes naturally even more than being a necessity, due to cultural, social and economic linkages over the open border. But, perhaps because of global preoccupations, New Delhi seems to constantly under-estimate Kathmandu's fierce sense of self. The stratagem over the decades has been to try to influence Kathmandu's politicians, forgetting that they too survive within the milieu of Nepali politics.

The legacy of 'big brother' started with Jawaharlal Nehru — Nepal's statesman B.P. Koirala in his memoir has pinpointed the precise moment in 1950 during a meeting at Teen Murti Bhavan when he realised that the fellow-revolutionary was now transformed as Prime Minister of India, inheriting the geopolitical inclinations of the departed colonialist.

The big stick

More recently, India became progressively interventionist as Nepal got mired in internal crisis during and after the Maoist 'people's war', and as the hill-plain polarisation escalated during the

* Kanak Mani Dixit, a writer and journalist based in Kathmandu, is founding editor of the magazine, 'Himal Southasian'.

constitution-writing. India has tended to speak loudly while wielding a big stick, based on a sense of entitlement and exceptionalism. But evidently, Indian nationalism for all its vigour cannot suppress nationalism across the frontier.

While there are of course numerous domestic factors, a key reason for political instability in Nepal has been India's overt and covert intercessions. This involvement explains in part why Nepal has not had a Prime Minister in office for more than a year-and-a-half over two decades now. Meanwhile, Indian analysts fail to appreciate how political stability in Nepal can deliver economic bounty to the bordering Indian States on its three sides. And economists should study the Pew Research Center figures showing Nepal as one of the larger sources of remittances to India, that too to the poorest regions such as north Bihar, east Uttar Pradesh and Odisha.

India is understandably apprehensive as the Chinese geo-economics juggernaut infiltrates the Sub continental countries, including Nepal. Rather than imperious warnings against consorting with Beijing, however, better to leave each society to develop its own method on dealing with China. In the case of Nepal, the arrival of the Qinghai-Tibet Railway at the northern border point in 2020 will be a game-changer, and the Indian market too is set to benefit.

With Khadga Prasad Sharma Oli sworn in as Prime Minister on February 15, there is now opportunity to start afresh on India-Nepal. It is true that India has never had as adversarial a Prime Minister in Kathmandu as Mr. Oli, but this is mainly the result of New Delhi's own short-sightedness.

Mr. Oli has been a moderate (if loquacious) politician who does not bend easily to populist pressures, but it fell on him during his previous term to stand up to the devastating Great Blockade of 2015.

It became his job to rally a populace under humanitarian distress and seek connectivity northward through a set of 10 agreements with Chinese President Xi Jinping in Beijing.

Tagging Mr. Oli as ‘anti-Indian’ is not sensible, for being ‘pro-Nepal’ does not ipso facto mean animosity towards India. And New Delhi may be surprised to find Mr. Oli more than willing to reciprocate its overtures, providing reassurance that Kathmandu will never act against India’s security interests, while insisting that in all areas Nepal will take its own decisions. Nepal’s politicians are masters at realpolitik, and the art of balancing India vis-à-vis China is not outside of Mr. Oli’s personal skill-set.

Desire for harmony

Thankfully, it does look like India is seeking a recalibration, and no one is asking for a public apology. The desire for rapprochement is seen in the three phone conversations Prime Minister Narendra Modi has had with Mr. Oli since December, and the dispatch of Foreign Minister Sushma Swaraj to Kathmandu before the new government was even formed.

Nepal’s topmost politicians, who never seem to retire, have got so used to revolving-door leadership that they are finding it hard to stomach the five-year term that the new government will probably get. On the other hand, the people’s expectation is that the longevity will ipso facto make for better governance.

Mr. Oli’s ascendance to prime-ministership marks the final turn of the key in implementing the Constitution of Nepal (2015), which was adopted despite India’s fervent lobbying. The promulgation marks an end to the extended derailment of the last two decades, with numerous tragedies from the Maoists ‘people’s war’ to the Great Blockade.

Nepal is now a federal and secular republic, experimenting with three levels of fully empowered government — central, provincial

and local. But there is confusion on the division of powers between the tiers, and foot-dragging by the national bureaucracy and many powerful politicians, besides an untested Constitutional Bench of the Supreme Court.

Ensuring inclusion

Mr. Oli inherits the share-the-spoils bhagbanda politics of the transitional years, which has left the police, bureaucracy and judiciary politicised. The decay in each sphere cries out for reform, from the private sector cartels that control the economy to corruption that has seeped to the village terraces.

The central socio-political task is to ensure inclusion in governance, giving the Janjati ethnicities as well as the Madhesi plains people and others a feeling of ownership of the state. While seeking to restore Nepal's position internationally, Mr. Oli has to implement the connectivity agreements he signed with Beijing in 2015, while lifting the relationship with India above the patron-suppliant status. He will have his hands full trying to raise employment through tourism, industry, agroforestry and agriculture, ensuring energy self-sufficiency through hydro projects and rescuing the post-earthquake reconstruction effort, which has been a scandal. With international assistance in decline, investors have to be attracted by the promise of the rule of law and due process if Nepal is not to remain the playground of carpetbaggers.

Speaking of the rule of law, the human rights community is worried that the ongoing truth and reconciliation process might be used as a sham exercise to pardon wartime atrocities. With Nepal recently elected to the UN Human Rights Council, there is opportunity to raise Nepal's international profile while finally putting the 'people's war' behind us all.

Mr. Oli is fortunate that the new Constitution ensures extended tenure, by not allowing a no-confidence vote for the first two

years. Besides, he rides a strong public mandate, having led the Left Alliance in its sweep of the local, provincial and national elections and forming governments at each tier. The field is also clear because the parties representing the Hindutva ideology and the deposed king, Gyanendra, were roundly defeated at all levels.

Reaching out

Mr. Oli's primary preoccupation will be managing the government's relationship with the opposition. The atmospherics between his Communist Party of Nepal (UML) and the Nepali Congress (NC) are at their worst, the latter sullen and vulnerable after the trouncing at the polls. He must reach out to build a working relationship with the NC and the Madhesbaadi plains-based parties, also because hundreds of new laws need to be urgently drafted under the Constitution.

The Prime Minister's immediate challenge, however, has to do with Pushpa Kamal Dahal ('Prachanda'), his Maoist partner in the Left Alliance. Mr. Dahal prefers to ignore the reality that his party was rescued from decimation by the electoral bonding with the UML. The voters gave him a respectable showing, hoping that the promised unification would subsume the Maoists within the UML, helping finally to neutralise the former.

As this is being written, the two parties are preparing a unification document. Meanwhile, bargaining for plum posts, Mr. Dahal is demanding an alopalo, rotating prime-ministership. This would mean a jump back to bhagbanda politics, endangering both stability and growth, dishonouring the electoral mandate.

Prime Minister Oli is tasked today to land Mr. Dahal where he can do no further harm to Nepal's state and society, and to reset the relationship with India at a new normal. On the latter, he seems keen to take the olive branch held out by Mr. Modi, which can only result in a 'win-win' for Nepal and India.

Obituary



A. N. Ram

(1939-2018)

Adjunct Professor,

M K Nambyar SAARCLaw Centre

IFS (Retd.)

Former Ambassador and Secretary,

Ministry of External Affairs, New Delhi

Amb. Amarnath Ram a veteran IFS officer passed away last March in Hyderabad. He was Adjunct Professor of M K Nambyar SAARCLaw Centre and had been a great source of support. He regularly lectured, advised and contributed to Centre's Journal. Amb. Ram was a highly respected diplomat and shared his views and experiences through articles and books a passion which he carried till last days of his life. His particular interest was in India's relations with ASEAN and published two books on the subject.

Amb. Ram studied MA (Economics) at Delhi School of Economics and was taught by no less an eminent economist than Dr. Manmohan Singh, Indian's former prime minister. Subsequently, he joined the Indian Foreign Service (IFS) in 1962 and retired in 1997 as Secretary to the Govt. of India in the Ministry of External Affairs. During the long thirty five years of this coveted service, he held several distinguished ambassadorial positions at Indian Missions in France, Bhutan, New York, Thailand, European Union, Japan, Zambia, Angola, Botswana, Belgium, Bhutan, Argentina, Paraguay and Uruguay.

Amb. Ram had been Prime Minister's Envoy to G-15 and was Prime Minister's Emissary for a Special Mission to Africa in 1998.

Of more immediate relevance to our SAARCLaw Centre is that distinguished diplomat was actively engaged in India's negotiations with SAARC. We are privileged to learn that he was one of the founder-members of BIMST-EC, a regional organization comprising SAARC and ASEAN countries. He was the Executive President of SAARC Writer's Foundation. He was closely associated as the Editorial Board Member of SAARC Studies Centre at Andhra University. Had written and published several articles/ papers on SAARC, ASEAN, and the EU. He founded the India Study Centres in Thailand and Belgium.

Apart from these official positions, at a personal level, he distinguished himself in setting up of three ZP High Schools in his native villages in Andhra Pradesh in memory of his late parents; to his Alma Maters in Lucknow and Delhi; to Lucknow University for an endowment in his late Father's memory; and to various social, cultural and educational causes dear to him. Last but not least, Amb. Ram was the recipient of Bhutan's highest Decoration.

We miss him and his demise is a terrible loss to the Centre. A humble and unassuming personality Amb. Ram had a very positive view of life. The Centre places on record his distinguished services.

May his soul rest in peace.

Guidelines for Authors

The M. K. Nambyar SAARCLaw Journal (MKNSLJ) was launched originally as a flagship of the M K Nambyar SAARCLAW Centre (MKNSLC) in 2010. Over its short span of publication the fledgling periodical has grown into a full-fledged Journal with ISSN (No.2346-8646) accreditation and peer reviewed journal. The Journal has not only sustained its periodicity as a bi-annual publication, but over the years it has matured in quality and readership, and commits to enrich its scholarship from issue to issue in the years ahead. A notable feature of the Journal is that it stands out as the only publication focused on the legal issues of concern and contemporary relevance to the SAARC region and its eight member countries though there are several other journals which debate a multitude of regional issues, political, economic, cultural, inter-state and other.

The Journal has adopted an inclusive approach by encouraging well researched articles from budding graduate and post-graduate law students of NALSAR with proven research aptitude and creativity. Scholarly contributions from other sources however are not excluded.

Contributors willing to submit article to the M K Nambyar SAARCLaw Journal should follow the prescribed guidelines. All contributors will be subjected to plagiarism test. Average score of plagiarism should not exceed 25% including footnotes / bibliography.

Length of the Article: 3500- 5000 words: font size: 12; Times New Roman; Space: 1.5

Abstract for the Article: The article should be accompanied by an abstract of 250 to 300 words which should be placed at the beginning of the paper.

Book Review: Book Reviews of some of the reputed Journal of SAARC Law are also invited. The minimum word limit of the content of Book Review should not be less than 1000 words. Full details of the book/Journal under review should also be furnished. Authors should apply the reference style furnished below.

All references should be footnotes at the bottom of each corresponding page of the text.

Book, single author: Footnote: Catherine Delafield, *Women's Diaries as Narrative in the Nineteenth-Century Novel* (Burlington, VT: Ashgate, 2009), 145.

Book, two or three authors:

Footnote: Steven D. Levitt and Stephen J. Dubner, *Superfreakonomics: Global Cooling, Patriotic Prostitutes, and Why Suicide Bombers Should Buy Life Insurance* (New York: William Morrow, 2009), 35.

Book, more than three authors:

Footnote: Andrew Gelman and others, *Red State, Blue State, Rich State, Poor State: Why Americans Vote the Way They Do* (Princeton: Princeton University Press, 2008), 128-9.

Book chapter/work in an anthology:

Footnote: Christine De Vinne, "Religion under Revolution in Ourika," in, *Approaches to Teaching Duras's Ourika*, ed. Mary Ellen Birkett and Christopher Rivers (New York, NY: Modern Language Association of America, 2009), 41.

Case Reference: Carew & Co. Ltd. V. Union of India, AIR 1975 SC 2260

Article from a journal: Footnote: Tom Buchanan, "Between Marx and Coca-Cola: Youth Cultures in Changing European Societies, 1960-1980," *Journal of Contemporary History*, vol. 44, no. 2 (2009): 372.

Article from a magazine/periodical: First Note: Jon Meacham, "The Stakes? Well, Armageddon, For One," Newsweek, October 12, 2009, 5.

Article from a newspaper: First Note: Tyler Kepner, "A Battering of Santana Saves the Yankees ' Weekend," New York Times, June 15, 2009, Section D, Final edition.

Article from an encyclopedia: First Note: Encyclopedia Britannica, 11th. ed., s.v. "Gilbert Keith Chesterton."

Websites (not online journals):

First Note: University of Georgia, "Points of Pride," University of Georgia, <http://www.uga.edu/profile/pride.html> (accessed October 21, 2009).

Immediate Reference: where a source is quoted again immediately after the first quote: Ibid; p.26

Multiple References: where a particular reference (book, article or any other sources) is quoted more than once in the text: supra note 12, p.50

Maps, tables, figures should be mentioned at appropriate places in the Text. They should be sourced at the bottom. Not at the Footnote.

Address for Correspondence:

M K Nambyar SAARCLaw Centre (MKNSLC)
NALSAR University of Law
Shameerpet, Medchal District,
Hyderabad - 500101
Telangana
Email: saarclaw@nalsar.ac.in



M K Nambyar SAARCLAW Centre
NALSAR University of Law
Shameerpet, Medchal District,
Hyderabad – 500101, Telangana, India