CHAPTER VIII

SUMMARY AND CONCLUSIONS

This research entitled, A comparative study of the Human Rights provisions in the International Bill of Human Rights (IBR) and The Constitution of India reflects an attempt by the researcher to examine the concept of Human rights and make a comparative study of the human rights provisions contained in the International Bill of Human Rights (IBR) with the human rights provisions enshrined in the Constitution of India.

The underlying importance of taking up ‘human rights’ as the subject matter for this research stems from the fact no development can be conceived without baseline respect for human rights; that unless human rights are made the focal point in good governance, India and for that matter, no country can progress, because sustainable development and economic progress cannot be achieved by any nation that disregards human rights. The purpose of selecting the International Bill of Human Rights (IBR) for the purpose of conducting this comparative study is because the IBR undoubtedly encompasses the core international human rights instruments at the international level and contain in a nutshell internationally recognized human rights. The International Bill of Human Rights constitute the core international Human Rights instruments initiated by the United Nations and comprise the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the two Optional Protocols to the ICCPR and the International Covenant on Economic Social and Cultural Rights (ICESCR).

Despite being the world’s largest democracy, with a population exceeding a billion people and constituting one-sixth of the world’s population, India is also a land of extremes and the stark inequities that exist in the Indian society, the growing divide between the haves and the have-nots\textsuperscript{511} and the lack of sustainable development in the

\textsuperscript{511} Though four of the world’s top richest men hail from India according to the Forbes list of the world’s richest men released in 2008, for India’s rural and urban poor, the chasm between them and the wealthy has only got wider and deeper. India’s position among the 177 countries on the Human Development Index (HDI) stumbled down by two points to end at 128 as per the Human Development
country make the study of human rights protection mechanisms in the Constitution indeed relevant. As ‘constitutions’ represent world over the documentary source that provides for the broad framework for governance in a nation and embodies human rights principles therein, the researcher has for the purpose of this comparative study chosen the Constitution of India as the ideal document to afford a comparative assessment of the human rights principles recognised at the international level with those in India. The researcher has attempted to corroborate and prove the statement made in hypothesis by a conscious comparison of the Provisions of PART III, PART IV, PART IVA and PART XVIII of the Constitution of India with the corresponding provisions in the International Bill of Rights. A conscious effort has been made to study the incorporation of the various provisions of the UDHR into the Constitution of India and how Indian Constitutional provisions correspond to the provisions of ICCPR and ICESCR besides studying the similarity in various terminologies employed. The areas of divergence with the underlying reasons for such divergence have also been studied.

The time period selected by the researcher for the purpose of this comparative study is a fifty year period starting from 10th December 1948, the historic day when the UN General Assembly unanimously adopted the UDHR. This fifty year period of study, from 10th December 1948 to 10th December 1998 is pertinent for it covers crucial periods of contemporary history starting with the unanimous approval of the UDHR by the UN General Assembly512 on 10th December 1948 by a vote of 48 in favour, 0 against, with 8 abstentions. It encompasses the historic and momentous occasion when India adopted her Constitution on 26th November 1949 with the Constitution of India coming into effect on 26th January 1950 and witnesses also the era when the two legally binding International Covenants, the ICCPR and ICESCR were adopted on 16th December 1966 by the UN General Assembly and came into force on January 3rd 1976 and March 23 1976 respectively after ratifications from

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512 Six Communist countries along with Saudi Arabia and South Africa, abstained from voting thus ensuring a unanimous approval of the Universal Declaration of Human Rights which has been hailed as a statement of intent for all nations and all peoples. India was one among the 48 countries that voted in favour of the UDHR.
thirty five countries. India acceded to these two International Covenants by depositing the Instrument of Accession on 10th April, 1979. This period of study until 10th December 1998 also covers a period that witnessed the coming into effect of Seventy-Eight Amendment Acts to the Constitution of India, giving credence to the organic and flexible nature of our Constitution and reflects the manner in which during this period the judiciary in India interpreted India’s Constitutional provisions and her commitment to the IBR by the ratification of ICCPR and ICESCR.

Such a comparative study can facilitate a comparative assessment of how much Indian provisions are in consonance with the International standards laid down in the IBR and provide information on areas where we need to fall in line with international standards to afford better protections of human rights for all peoples in India.

The general hypothesis framed, namely-

"The human rights provisions in the Constitution of India reflect the human rights provisions enshrined in the International Bill of Human Rights (IBR) comprising the UDHR, ICCPR and ICESCR" was tested and proved by-

- A detailed examination of the objectives of the UDHR, ICCPR and ICESCR and the Preamble of the Constitution of India
- An examination of the various civil and political rights enshrined in the UDHR and the ICCPR along with a study of the comparative provisions in PART III of the Constitution of India.
- An examination of the various Economic, Social and Cultural (ESC) rights enshrined in the UDHR and ICESCR and an examination of corresponding provisions enshrined in PART IV of the Constitution pertaining to the Directive Principles of State Policy.
- An exploration of Third Generation Human Rights to assess the extent of their incorporation into the IBR and into the Constitution of India.
• A study of the modus operandi for redress of grievance in the International Bill of Rights besides undertaking a study of the provisions pertaining to Constitutional Remedies in the Indian Constitution in order to assess the extent of application of the international norms pertaining to redress of grievance in the Constitution of India.

• An appraisal of the importance given to fundamental duties, in the IBR and the Constitution of India, fully recognizing that for every right there is a corresponding duty.

• An examination of areas where there was a departure in the Constitution of India from the Human Rights provisions of the IBR with intent to understand the causes for such departure besides examining special provisions in our Constitution expressly enshrined therein to suit the specific needs of people in India in the light of the prevailing socio-economic conditions in the country.

• An examination of the specific provisions in the ICCPR and ICESCR to which the Government of India had expressed her reservation and attempting to understand the causes thereof.

• Undertaking an examination of the principal objectives of the First and Second Optional Protocol to the ICCPR and seeking to understand why India did not ratify both of the aforesaid Optional Protocols and in analyzing whether in taking such a stance India has compromised with the Human Rights principles sought to be protected in the International Bill of Rights.

This research is predominantly a comparative research. Comparative methodology has been applied in general. However to trace the history of Human Rights historical methods have been employed. In addition, analytical method and examination of case laws have also been employed to assess the degree of consonance that human rights provisions in the Constitution of India bears to the provisions in the International Bill of Human Rights. The methodology employed includes the use of Primary and Secondary Sources of data; Legal Human Rights Instruments at the international level, in particular the UDHR, ICCPR AND ICESCR and various domestic legislations, statutes and the enactment of the Constitution of India and the
Protection of Human Rights Act 1993 form important Primary Sources of data. Secondary data has been drawn from text books on Human Rights, from commentaries on the Constitution of India, case comments, law journals and annual reports of the National Human Rights Commission. This study constitutes not an empirical research but is analytical and comparative in nature with the primary objective of analyzing the degree of Human Rights protection afforded in the Constitution of India and in ascertaining whether the International Standards as set out in the IBR are met and to also assess areas where we have digressed from the International Human Rights Standards and ascertain the cause for such digression or departure besides providing suggestion and recommendations to strengthen the Human Rights principles in the Constitution of India.

Observation and Findings of the Researcher:

The researcher devotes this last chapter to outline her summary and conclusions drawn from the research work. In this analytical and comparative study the researcher had based her hypothesis on the premise that the Constitution of India reflects the Human Rights principles embedded in the IBR. The researcher outlines the systematic attempt she has made to corroborate and justify this premise by a conscious comparison of the Provisions of PART III, PART IV, PART IVA, PART IX, PART IX A and PART XVIII besides analyzing other relevant provisions of the Indian Constitution with the International Bill of Rights and by culling out the underlying philosophy of the Constitution as reflected in the Preamble and the body of the Constitution to showcase the statement of intent contained there in.

The researcher here seeks to draw attention to those features in the Constitution that she sees as a set back to providing adequate Human Rights protection namely the express provision of Preventive Detention513 among Fundamental Rights enshrined in PART III of the Constitution and the repeal of the right to Property from the Indian Constitution which the researcher submits has the consequence of a double edged sword. Referring the emergency period imposed in the country in between June 1975 and March 1977 the researcher adds that 'The sceptre

513 Vide Article 22 (3)
of dictatorship did loom large but once' but mercifully the emergency hailed by jurists as an 'aberration' was corrected through the political process itself.

The thrust of the study and the findings of the researcher in preceding chapters are broadly as follows-

In Chapter One, the **Introductory Chapter**, the researcher has outlined the concept of Human Rights, traced its Historical evolution up to the passage of the Universal Declaration of Human Rights and has examined the various theories of Human Rights and the bearing they have had on the UDHR, aptly described as the *Magna Carta* of modern Human Rights jurisprudence. The Indian nationalist movement which culminated in India securing her independence in August 1947 is portrayed in this chapter as a conscious struggle by Indians for self determination and the realization of certain basic fundamental freedoms for all her people. Though critics refer to the Indian Constitution as 'a patch work constitution' the credit of its framers lay in gathering the best features of each of the existing constitutions and in modifying them to meet the needs of the Indian polity and therefore the researcher opines in this chapter that our constitution is indeed 'a beautiful patch work' and believes that even critics would concede to this point of view. The researcher by a comparison of the various provisions of the Karachi Declaration which find place in the UDHR points out how the Karachi Declaration of the Indian National Congress in 1931 can be seen as a fore runner of the UDHR. Also the underlying philosophy of the Indian Constitution is studied with the intent to show case the consonance the philosophical principles bear to the internationally recognized Human Rights principles enshrined in the IBR and to highlight the areas where there is a departure from recognized International Human rights standards as set out in IBR.

Further the researcher has pointed out how during the Vienna Conference in 1993, leaders from South east Asia put forth the concept of the 'Asian perspective of Human Rights' and stressed on the need to give greater emphasis to ESC rights. By drawing reference to the impact of the 25th and 42nd Constitutional Amendment Acts in India the researcher has sought to show how some of these concerns were reflected in India too, through Constitutional Amendments.
The researcher points out how the 25th Constitutional Amendment Act placed Art.39 clause (b) and Art.39 clause (c) on a higher pedestal than even the fundamental rights regarding equality and personal freedoms set out in Art14 and 19 respectively by declaring that no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19. However while the twenty-fifth Constitutional Amendment Act was challenged subsequently in Kesavananda where the Supreme Court upheld its validity the Supreme Court in the same case also declared that judicial review is indeed part of the basic structure of the Constitution.

The Forty Second Amendment Act, of 1976 went out even further to strengthen the scope and ambit of Directive Principles of State Policy. The further Amended Article 31C sought to give complete constitutional protection to laws passed not only to implement the principles specified in Article 39(b) and (c) but also to all the principles laid down in PART IV. In Minerva Mills, the Supreme Court by a 4:1 majority, struck down Art.31-C as amended by Section 4 of the 42nd Amendment as unconstitutional on the ground that it destroys the "basic features" of the Constitution.

The researcher also in this chapter has striven to point out how in this period the Supreme Court in numerous judgments interpreted fundamental rights in the light of the Directive Principles and further declared that the Constitution aims at bringing about synthesis between Fundamental Rights and Directive Principles.

The second chapter entitled The Basic Structure Doctrine of the Indian Constitution seeks to throw light on the interpretation of the Preamble to the Constitution by the Supreme Court of India. The researcher draws attention to the early era in independent India when the Supreme Court had held that the Preamble

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514 The Twenty fifth Amendment Act of the Constitution inserted Art.31C which read that—Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19.
was not a part of the Constitution but merely served as an introduction and then traces the shift in perception of the Apex Court in this regard over the years. The researcher highlights the innovative stand taken by the Apex Court in its ruling in Keshavananda’s\textsuperscript{515} case wherein the Supreme Court while conceding that the Constitution is an organic document capable of modification and amendment never the less declared that the Parliament cannot take away the basic structure of the Constitution while using its amending powers under Article 368. The researcher emphasizes how this ruling of the Apex Court delivered in 1973 by a full bench of the Supreme Court comprising of thirteen judges still holds good in the country and has ensured in its wake that any amendment to the operative part of the Constitution of India must be in keeping with the basic philosophy of the Preamble and in so doing the researcher points out that the Supreme Court has effectively pointed out that though the Constitution is a flexible document, the legislature cannot make untrammeled amendments.

In the third Chapter entitled Civil and Political Rights in the International Bill of Rights and Corresponding Provisions in the Constitution of India- (A Study of the Derogable Provisions) the researcher outlined the derogable provisions pertaining to civil and political rights contained in the IBR. The researcher in this chapter has culled out these civil and political rights provisions in the ICCPR that had its genesis in the UDHR and then made a comparative study of the First Generation Human Rights/civil and political rights as protected in PART III of the Constitution of India. The researcher has also ascribed reasons to why India had expressed her reservation with respect to Article 1 pertaining to the right of Self Determination and Article 9(5) of the ICCPR pertaining to compensating victims of unlawful detention. The researcher submits that though the Indian Constitution has federal characteristics, Ambedkar chose to describe India as a Union of States and submits that it is the fear of States ceding from the Union which prompted the Government of India to declare that the right of Self determination should only be applicable to countries that have not yet acquired independence and should not apply to sovereign countries. The

\textsuperscript{515} His Holiness Kesavananda Bharati Sripadagalavaru and Ors v State of Kerala and Another 1973 (4) SCC 225, AIR 1973 SC 1461.
researcher further cites case laws to substantiate her contention that the reservation expressed by India with respect to Article 9 (5) of the ICCPR, namely the provision of compensating victims of unlawful detention has been considerably watered down by the Supreme Court of India that has time and again upheld compensatory jurisprudence. A detailed examination of the derogable provisions in the ICCPR and comparison of the same with the corresponding constitutional and other legal provisions in India was undertaken by the researcher to show case the consonance that our constitutional provisions bear to the provisions of the International Bill of Rights.

The researcher has sought to draw attention to the implications that abound the repeal of the right to property vide the 44th Constitutional Amendment Act of 1978. While the right to property continues to remain a constitutional right it is no longer a fundamental right under the Constitution of India. However theorists point out that Article 300-A which states that “no person shall be deprived of his property save by authority of law” has ensured the protection of this right by all ‘persons’, a term no doubt wider than the term ‘citizens’ to which this right earlier applied under Article 19(f) in PART III of the Indian Constitution. All the same the researcher submits that the repeal of the right to property has the consequence of a double edged sword. No doubt the dilution of the right to property was necessitated in the post independent period in India to facilitate land reforms. However the ultimate repeal and taking away of this fundamental right altogether has left scores of people in the country vulnerable in the face of compulsory acquisition of property ostensibly to facilitate development in the nation and through the increasing application of the ‘doctrine of eminent domain’. In such a situation internally displaced people have no longer the right to file a writ under Article 32 for such remedy is available only in the event of the infringement of a fundamental right of the Constitution but must instead have recourse to a long and winding legal process.

The researcher would also like to draw attention to the fact that while Article 17 of the UDHR expressly recognizes the right to property as a basic human right the ICCPR is silent on this issue. In India, the Apex Court has given a very liberal interpretation to the term ‘property’ declaring that it should extend to all those well

516 Vide Article 300A of the Constitution of India
recognised types of interest having the insignia or characteristic of property rights. Thus corporeal and incorporeal rights\(^{517}\), money\(^{518}\), contract, interest in property, shareholder interest in a company, and the right to receive pension\(^{519}\) have all been declared to come within the ambit of property.

In Chapter IV entitled **Emergency Provisions** the researcher states that while the ICCPR in Article 4 clearly mandates that certain rights namely the rights contained in Article 6, 7, 8, 11, 15, 16 and 18 of ICCPR are *non derogable* even in times of a Public Emergency PART XVIII of the Constitution of India deals with emergency provisions (Articles 352 to 360) with Article 359 outlining the non derogable provisions. The extent of consonance and divergence of the Indian Constitutional provisions from the principles of the IBR as enunciated in the *non-derogable* provisions of ICCPR is dealt with at length in this Chapter with the researcher making out a case for total consonance with the safeguards in the International Bill of Rights. The impact of the 42\(^{nd}\) and 44\(^{th}\) Amendment Act of the Constitution of India on emergency provisions and the interpretation by the Apex Court regarding suspension of Fundamental Rights during the declaration of emergency also finds place in this chapter. The researcher draws attention to the flak drawn by the Apex Court in the wake of the its judgment in *A.D.M Jabalpur v. Shivakant Shukla* and she also outlines the steps taken by the legislature in the post emergency period to restore certain original Constitutional provisions vide the 44\(^{th}\) Constitutional Amendment Act. The researcher states how pursuant to the 44\(^{th}\) Amendment Act of the Constitution of India, the non-derogable provisions of the ICCPR, save right to freedom of conscience outlined in Article 18 of ICCPR are upheld presently under the Indian Constitution since Article 20 and 21 have been declared to be non-derogable. Though Article 359 empowers the President to suspend the right to enforce Fundamental Rights guaranteed by PART III of the Indian Constitution and suspend all proceedings pending in any court of law for the enforcement of a fundamental right, while a proclamation of Emergency is in operation, Article 20 and 21 have been declared to be non-derogable. Given the wide

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518 *Bombay Dyeing Co. v. State of Bombay*, AIR 1958 SC 328
amplitude of Article 21 of the Constitution of India the researcher points out how Article 7 and 8 of ICCPR dealing with freedom from torture and protection against slavery and servitude have been declared to be part and parcel of the right to life protected under Article 21 and given further that Article 21 accords right to life to all natural persons, the non-derogable provision of Article 16 of ICCPR is also met. Article 15 of the ICCPR corresponds to Article 20 of the Indian Constitution. Thus in essence Article 6, 7, 8, 15 and 16 of ICCPR are upheld in India during the Proclamation of an emergency. Though India expressed her reservation with respect to the provisions of ensuring that ‘no one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation’ as decreed in Article 11 of the ICCPR the researcher draws attention to the corresponding provisions in the Civil Procedure Code of 1908 in India to amply demonstrate how indigent judgment debtors are protected from imprisonment on account of failure to pay a contractual debt and has resorted to the landmark judgment in *Jolly George Varghese*\textsuperscript{520} case to substantiate her observation that despite applying ‘the doctrine of specific adoption’ with regard to this right, Justice Krishna Iyer who delivered the judgment in the instant case went at length to showcase the consonance that domestic laws in India had in this respect with Article 11 of ICCPR. However the non-derogable Article 18 of the ICCPR which upholds the freedom of conscience may be suspended in India and to this extent the comparative provisions indicate a divergence.

The researcher points out how in *Xavier v. Canara Bank Ltd* and in *Jolly George Varghese* Krishna Iyer, J. was influenced by Article 11 of the International Covenant on Civil and Political Rights, 1966, in interpreting the Civil Procedure Code to minimize imprisonment for non-payment of civil debts. But at the same time, he also emphasized that international treaties cannot override the law of the land to do away with such imprisonment altogether thereby giving credence to the doctrine of specific adoption.\textsuperscript{521}

\textsuperscript{520} Jolly George Varghese v. Bank of Cochin AIR 1980 SC 470
\textsuperscript{521} A.H. Robertson in “Human Rights - in National and International Law” also points out that international conventional law must go through the process of transformation into the municipal law before the international treaty can become an internal law. From the national point of view the national rules alone count..........with regard to interpretation, however, it is a principle generally recognized in
The researcher opines that the innovative judgment of the Apex Court in India in the *Vishaka*\(^{522}\) case has indeed been a turning point in the application of International Law by India. By holding the view that the principles enshrined in International Covenants ratified by India can be applied by the domestic courts, invoking the doctrine of harmonious construction, the requirement of the doctrine of specific adoption which mandates legislative reforms and change in municipal law before domestic courts can invoke the provisions of international covenants ratified by the member state and as was observed by the Court in India in making the *Jolly George*\(^{523}\) case has now been overcome.

The researcher through the comparative study also reveals how in India though the Apex Court earlier applied the ‘doctrine of specific adoption’ and declared that International treaties will not automatically become applicable in domestic courts merely by ratification of these treaties by the government the Apex Court subsequently took a different stand in the landmark judgment of *Vishaka v. State of Rajasthan* and declared that International treatise can be applied by domestic courts by adopting the **doctrine of harmonious construction**. In “*Sheela Barse v. Secretary Children’s Aid Society*”, while issuing directions to the State of Maharashtra, the Supreme Court held that the conventions which had been ratified by India, and elucidate norms for the protection of children, cast an obligation on the state to implement their principles.\(^{524}\) Thus the court in a break from its earlier judgments came to the conclusion that treaties, even if unincorporated into national law, have binding effect. The researcher opines that through liberal interpretation the Apex Court in India have thus forged new tools and methods to enlarge the range and meaning of the fundamental rights, which has resulted in the burgeoning human rights jurisprudence.

The fifth Chapter entitled, **Economic, Social and Cultural Rights in the International Bill of Rights and Corresponding Provisions in the Constitution of national legal systems that, in the event of doubt, the national rule is to be interpreted in accordance with the State’s international obligations.”**

\(^{522}\) *Vishaka v. State of Rajasthan* AIR 1997 SC 3014


\(^{524}\) Another is the NHRC’s order (January 17, 2003) on the Right to Food, relying on the UDHR and ICESCR
India outlines the economic, social and cultural rights contained in the IBR. The researcher draws on the ESC Rights enshrined in the UDHR and elaborates the substantive provisions of the ICESCR. The researcher draws reference to the debate that ensued at the international level concerning the superiority of first generation rights over second generation rights and states how by the time of the Vienna Conference in 1993 an international consensus was reached which reaffirmed the equal importance of first and second generation human rights besides declaring that civil and political rights on one hand and ESC rights on the other hand are interdependent and mutually reinforcing. The doctrine of 'minimum core content' and the Limburg Principles clearly demonstrated the justiciability of ESC Rights at the international level and the researcher has sought to shed light on how in India too the judiciary has time and again read ESC rights in the Fundamental Rights contained in PART III of the Constitution besides recognizing the doctrine of minimum core content with regard to the liability of the State in protecting ESC Rights. The consequence of the insertion of Article 31C into the Constitution of India the impact of the 25th Constitutional Amendment Act and the impact of the 42nd Amendment Act have been outlined to indicate how for a brief period of time the ESC Rights in India had an overriding effect over rights contained in PART III of the Constitution. The significance of the ruling in Minerva Mills and the stand of the Apex Court in upholding judicial review as part of the basic structure of the Constitution has been stressed to indicate how the Apex Court in India has striven to maintain the harmony and parity between PART IV of the Constitution which largely upholds ESC rights (second generation rights) and PART III of the Constitution which protects first generation rights.

The researcher submits that the Apex Court by upholding the Twenty fifth Amendment Act, and retaining the paramount nature of Articles 39(b) and (c) has striven to ensure that the distribution of ownership and control of the natural resources of the country are used to subserve the common good besides ensuring that the economic system does not result in the concentration of wealth in the hands of a few

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525 AIR 1980 SC 1789.

526 By declaring that laws passed to give effect to these principles are valid even if they contravene the principles of equality enshrined in Art.14 and personal freedoms enshrined in Art.19, the paramount nature of Articles 39(b) and (c) is duly ensured.
to common detriment. These ideals are particularly significant in the context of globalization in the country and in the face of the growing divide between the haves and the have-nots in the nation. Besides, the paramount nature of Article 39 (2) will support the ‘doctrine of commons’ and help contain over exploitation of resources by multinational companies and further promote third generation human rights like sustainable development and right to intergenerational equity. The ongoing Plachimada dispute is a case in point.

The sixth Chapter is entitled, **Third Generation Human Rights and the Constitution of India.** The researcher in this chapter points out how following the three watchwords of the French Revolution namely, ‘Liberty’, ‘Equality’ and ‘Fraternity’, Karel Vasak an eminent Czech jurist classified Human Rights into three divisions in 1979 at the International Institute of Human Rights in Strasbourg and how these theories have primarily taken root in European law and also find expression in our Constitution.

While the first and second generation human rights have been adequately covered in the IBR, most Third Generation Human Rights do not find express mention in the International Bill of Rights other than the right to self determination and minority Rights and are instead recognized as implicit provisions. Third Generation Human Rights found express mention in subsequent documents of international law, like the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment, the 1986 UN Declaration on the Right to Development, the 1992 Rio Declaration on Environment and Development, and other pieces of generally “aspirational soft law.” The implementation of these rights is considered to be onerous given the ‘principle of sovereignty and the preponderance of would-be offender nations’.

With the 42nd Amendment Act to the Constitution of India, Article 48A was inserted in PART IV of the Constitution and provided for the ‘Protection and improvement of environment and safeguarding of forests and wildlife’. Further PART

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IVA was inserted into the Constitution by virtue of the same Amendment Act wherein Article 51A(g) states that “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;”

In numerous judgments the Apex Court has further affirmed that the right to a clean environment is indeed part of right to life and the researcher has cited these instances to point out how various Third generation Human Rights have been recognized as justiciable fundamental rights in India. The interpretation of the constitutional provisions by the Apex Court on sensitive issues concerning economic and social development, sustainable development and minority rights and right to information among other third generation human rights also find place in this chapter to showcase how third generation human rights are protected constitutionally besides drawing a comparison of these rights with the rights in the IBR.

In Chapter Seven entitled Redress of grievances- a comparison the researcher briefly discusses the procedure of redress of grievances in the IBR. The researcher thereafter provides an insight into the Constitutional remedies contained in Article 32 and Article 226. Apart from exploring the Writ jurisdiction under the Constitution the researcher also traces the growth of PIL in India. The factors leading to the passing of the PHRA 1993 is briefly outlined and the researcher points out to the limitations of the Protection of Human Rights Act and to the mere recommendatory role of the National Human Rights Commission and State Human Rights Commissions envisaged under the said Act and states how presently the Constitution continues to serve as the primary source of protection of Human Rights in India.

The role of the judiciary in preventing untrammeled constitutional amendments and the importance of judicial review has been highlighted. The researcher points out that the basic structure doctrine provides the much needed check and balance required in a Parliamentary Democracy.
The researcher has also drawn attention to those features in the Constitution that she sees as a setback to providing adequate Human Rights protection namely the express provision of Preventive Detention among Fundamental Rights enshrined in PART III of the Constitution and the repeal of the right to Property from the Indian Constitution which the researcher submits has the consequence of a double-edged sword. Referring the emergency period imposed in the country in between June 1975 and March 1977 the researcher adds that ‘The sceptre of dictatorship did loom large but once’ but mercifully the emergency hailed by jurists as an ‘aberration’ was corrected through the political process itself.

These are in brief the summary of the findings of the researcher in this comparative study.

Micro studies on specific human rights can throw more light on the various nuances and aspects of each of these rights at the national and international level. This can in turn afford an in-depth insight into how the constitutional provisions in India correspond to the comparative provisions in the IBR and other international Covenants. Comparative research studies may be undertaken with respect to any specific human rights, eg. Right to Education, Right to Food, the Right to freedom of religion or can relate to an inquiry into the impact of Preventive Detention to cite a few thrust areas.

By conducting empirical studies in future through surveys and questionnaires the researcher believes that the scope of the present study for assessing the adequacy of the safeguards concerning Human Rights provisions in the Constitution can be enlarged.

International human rights and humanitarian law have phenomenally expanded their scope and application to become one of the most comprehensively regulated branches of International Law and have provided an elaborate canvas covering complex areas of transnational concerns such as trade, economy and development, human rights and environment in the latter half of the twentieth century.

528 Vide Article 22 (3)
At the national level, Constitutions constitute the ‘supreme law of the land’ and apart from laying down the broad scheme of governance in a country, expressly outline human rights and basic fundamental freedoms.

While conceding that the Constitution of India in its present form is a far cry from the text of the Constitution that was promulgated on 26th November, 1949, (as on 2005 the Constitution of India was amended 93 times) the researcher still maintains that the Indian Constitution has stood the test of time since it came into force and has despite the numerous amendments to the Constitution still maintained its ‘basic structure’. The Constitution has endeavoured to protect and preserve its core vision and the vision of the International Bill of Rights by retaining a Secular and Democratic character, by incorporating her own brand of socialism, by protecting and enhancing national unity and integrity, by recognizing that civil and political rights and ESC rights are interdependent and mutually reinforcing by respecting the rule of law, by establishing institutions infusing the spirit of democracy and by fostering a social revolution to better the lot of the Indian masses and has indicated its organic characteristics to adapt to the changing needs in society in the national and global context.