CHAPTER 1

INTRODUCTION

THE CONCEPT OF HUMAN RIGHTS AND THE UNDERLYING PHILOSOPHY OF THE INDIAN CONSTITUTION

Human Rights in general can be defined as “those rights, which are inherent in our nature and without which we cannot live as human beings”. Human Rights are the claim of the individual for such conditions as are essential for the fullest realization of the innate characteristic which nature bestows on him/her as a human being. In other words it is implied that there are certain inherent and inalienable rights which accrue to all individuals simply by virtue of being human and they are necessary to ensure the dignity of every person as a human being, irrespective of one’s race, religion, nationality language or any other factor. However, all claims of an individual to live as one wishes or to do what one pleases, cannot be treated as human rights. Only those claims which are essential for the development of one’s human personality and recognised as such by the ‘Society’ constitute human rights.

The belief that everyone, by virtue of her or his humanity, is entitled to certain human rights is fairly new, never the less its roots, lies in earlier tradition and documents of many cultures. It took the catalyst of World War II to propel human rights onto the global stage and into the global conscience.\(^1\)

The researcher in this introductory chapter seeks to highlight the notable human rights instruments in the west that can be hailed as precursors to the 20\(^{th}\) century human rights instrument and has sought to appreciate the growing recognition ascribed to human rights provisions during India’s national struggle for independence. The various provisions enshrined in the Karachi Declaration of the Congress in 1931 found expression in the UDHR, establishing this Declaration as a forerunner to the UDHR. The researcher examines the human rights provisions in the Constitution enacted and adopted by ‘We, the people’ in India, framed in the backdrop of the

UDHR and also asserts the universality of these principles while seeking to shed light on the Asian perspective of human rights.

Philosophic foundations of Human Rights and Precursors to Twentieth Century Human Rights instruments:

Throughout much of history, people acquired rights and responsibilities through their membership in a group – a family, indigenous nation, religion, class, community, or state. Most societies have had traditions similar to the "golden rule" of "Do unto others as you would have them do unto you." The Hindu Vedas, the Babylonian Code of Hammurabi, the Bible, the Quran (Koran), and the Analects of Confucius are five of the oldest written sources which address questions of people's duties, rights, and responsibilities. In fact, all societies, whether in oral or written tradition, have had systems of propriety and justice as well as ways of tending to the health and welfare of their members. Other early written sources of human rights include the Cyrus cylinder of 539 BC; the Edicts of Ashoka issued by Ashoka the Great of India between 272-231 BC; and the Constitution of Medina of 622 AD, drafted by Muhammad to mark a formal agreement between all of the significant tribes and families of Yathrib (later known as Medina), including Muslims, Jews and Pagans.

The concept of human rights which dates back to time immemorial had its basis resting on theology wherein the principles inculcated were presented as immutable and eternal and endowed with divine sanction. The idea of 'natural law' or 'jus naturale' was developed by Greek thinkers who believed that natural laws were higher than positive laws. In the light of the natural law theory human rights came to be regarded as the rights that inhere in every human being by virtue of his personality and which are inalienable and immutable. The natural law theory was first elaborated by the stoics of the Greek Hellenistic period and later by the Romans. A classic

2 University of Minnesota, Human rights resource center
3 Passages in the text constituting a declaration of intentions by the Persian emperor Cyrus the Great after his conquest of the Neo-Babylonian Empire have been interpreted as expressing Cyrus' respect for humanity, promotion of religious tolerance and freedoms and for the abolition of the imposition of forced labor ("corvee-work") upon the populace. A replica of the cylinder is kept at the United Nations Headquarters in New York City.
example of the natural law theory as is reflected in Greek mythology is that of Antigone who defied Creone’s command not to bury her slain brother by claiming that she was obeying a law higher than the ruler’s command. Medieval Christian Philosophers like Thomas Aquinas stressed that natural laws conferred certain immutable rights on individuals as part of the law of god. A secular twist was provided to this theory as feudalism declined by Hugo Grotius and Pufendorf. However, natural law doctrines still recognised the legitimacy of slavery and serfdom and a class ridden society and in so doing the essence or central most idea of human rights as perceived today was grossly missing.

The Magna Carta of 1215, the English Petition of Rights, 1627, The English Bill of Rights, 1688, The French Declaration of the Rights of Man and Citizen, and The American Declaration of Independence are precursors to modern human rights instruments. Though many of these documents, when originally translated into policy, excluded women, people of color, and members of certain social, religious, economic, and political groups, oppressed people throughout the world have drawn on the principles these documents express to support revolutions that assert the right to self-determination.

The idea of modern Human Rights arose as a wave, first in the seventeenth century that culminated towards the end of the eighteenth century and was followed by a second wave that commenced in the early half of the twentieth century and continues presently, exerting a powerful influence in the fields of politics, legislation and the administration of justice.

The concept of human rights has existed under several names in European thought for many centuries. One of the earliest recorded human rights instruments was the Charter of Liberties issued by King Henry I of England to mark his coronation in 1100. In 1215 King John was cornered in a meadow in Runnymede by the Earls, Barons, Abbots and the landed gentry after a series of failures at home and

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4 www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-1/short-history.htm
5 A large part of Magna Carta was copied, nearly word for word, from the Charter of Liberties of Henry I, issued when Henry I ascended to the throne in 1100, which bound the king to certain laws regarding the treatment of church officials and nobles, effectively granting certain civil liberties to the church and the English nobility.
abroad. The disagreements between Pope Innocent III and King John combined with perceived abuses of the king's power led the English barons to revolt and attempt to restrain what the king could legally do. In a desperate attempt to retain his crown, King John signed the historic Magna Carta or Great Charter, consisting of sixty three chapters which enumerate a number of what later, came to be hailed as human rights. Notable among them were the freedom from arbitrary arrest and arbitrary imposition of taxes by the king and the recognition of the writ of Habeas Corpus. Other rights secured in this document included freedom of the church from governmental interference, the rights of all free citizens to own and inherit property and be free from excessive taxes, the right of widows who owned property to choose not to remarry and thereby retain their property, the principles of due process and equality before the law and salutary provisions forbidding bribery and official misconduct. Though the Magna Carta was essentially a feudal document, the sheer breadth of language employed in the document helped it withstand the test of time. The rights enshrined in the Magna Carta were available to all 'free men'. No doubt 'free men' as envisaged in the Magna Carta was intended in a restrictive sense implying 'liber homo' and did not include the landless peasants or the Serfs but the phraseology turned out to be of momentous importance in giving the Charter the widest application in future centuries and more so in the contemporary world where the term 'freeman' well encompasses the 'common man or 'aam admi' and has acquired a universal nomenclature. Coke in his seventeenth century commentary on Magna Carta, could read it as a guarantee of trial by jury to 'all men'; as absolutely prohibiting arbitrary arrest; and as solemnly undertaking to dispense to all full, free and speedy justice. Even more suggestive, in Coke's commentary the crucial phrase at the end of the Chapter, "by the law of the land," was read as equivalent to the "due process clause"- thus providing the link between the Great Charter and the most important clause of the American Bill of Rights.

Reference to the Magna Carta was made on several subsequent historic occasions down to the framing of the provisions of the UDHR. To quote Sir Winston

6 Chapter 39 of the Magna Carta
7 Chapter 12 of the Magna Carta
8 This right arises from Chapters 36, 38, 39, and 40 of the 1215 Magna Carta.
9 'aam admi' in Hindi translates to common man in English.
Churchill, "Here is a law which is above the King and which even he must not break.\textsuperscript{10} This reaffirmation of a supreme law and its expression in a general Charter is the great contribution of the Magna Carta and this alone justifies the respect in which men have held it."

The English Petition of Right 1627 that was produced by the Parliament\textsuperscript{11} in the run-up to the English Civil War was addressed to Charles I of England in 1628\textsuperscript{12} who agreed to look into the "abuses", but maintained his prerogative rights.\textsuperscript{13} The English Bill of Rights of 1688 further sought to assert Parliamentary Supremacy and limit the powers of the king. The important human rights principles that this Bill of Rights secured was ensuring free and fair election to Parliament; ensuring freedom of speech and debates in Parliament without any interference of the Court and the frequent holding of Parliament. In addition, the Bill of Rights specifically condemned the abuses of the prerogative by James II by expressly declaring that "the pretended power of suspending of laws or the execution of laws by regal authority without the consent of the parliament is illegal."

The political and religious traditions in other parts of the world also called on rulers to rule justly and compassionately delineating limits on their power over the lives, property, and activities of their citizens. The 1776 American Declaration of Independence\textsuperscript{14} and 1789 French Declaration of the Rights of Man and Citizen drew heavily on this concept.

\textsuperscript{10} The most significant clause for King John at the time was clause 61, known as the "security clause", the longest portion of the document. This established a committee of 25 barons who could at any time meet and over-rule the will of the King, through force by seizing his castles and possessions if needed. This was based on a medieval legal practice known as \textit{distraint}, but it was the first time it had been applied to a monarch. In addition, the King was to take an oath of loyalty to the committee.
\textsuperscript{11} In enacting the Petition, Parliament attempted to seek redress on taxation without Parliament's consent and provided for protection against forced loans; arbitrary arrest and arbitrary interference with property rights and imprisonment contrary to the Magna Carta. Enforcement of \textit{habeas corpus}, protection against forced billeting of troops, imposition of martial law and exemption of officials from due process were other salient features.
\textsuperscript{12} The Petition is dated 1627 because it retroactively came into force from the start of the 1627 session of Parliament.
\textsuperscript{13} The petition had the support of Sir Edward Coke and John Pym who claimed that the rights demanded predated even the Norman Conquest and was confirmed by successive kings.
\textsuperscript{14} The US Declaration of Independence a document which "still stirs feelings, and debate," begins with the opening words, "We hold these truths to be self-evident; that all men are created equal, that they are
In 1789 the people of France overthrew their monarchy and established the first French Republic. Out of the revolution came the “Declaration of the Rights of Man and Citizen” rightly considered to be a precursor to international human rights instruments. This largely individualistic Declaration containing seventeen Articles put forward a doctrine of popular sovereignty and equal opportunity and emphatically declared that the rights to liberty, property, security and resistance to oppression are the natural and imprescriptible rights of man. However women were not included in the scheme of rights propounded by this lofty declaration prompting Olympe de Gouge, French playwright and feminist, a passionate advocate of human rights, who had greeted the outbreak of the Revolution with hope and joy, but soon became disenchanted, in that the fraternité of the Revolution was not extended to women, in 1791 to declare a separate Declaration of the Rights of Women and Citizen for which she paid dearly and had to face the guillotine. The subsequent reign of terror heralded in by Robespierre lent its name to the modern term ‘terrorism’

In Europe, the natural law theory paved the way for the natural rights theory in the seventeenth century and John Locke was its chief exponent. The Natural Rights theory provided the philosophic impetus for the wave of revolt against absolutism during the late eighteenth century.

Several philosophers in Europe, in the eighteenth and nineteenth centuries proposed the concept of “natural rights” as rights belonging to a person by nature and because he was a human being and not by virtue of his citizenship in a particular country or membership in a particular religious or ethnic group. The idea of human rights played a key role in this era as a struggle against political absolutism and it was believed that governments derived their powers from the consent of the governed and that human rights were inherent and not a bounty of the State. All the same, the concept was vigorously debated and rejected by some philosophers as baseless. Detractors and eminent jurists like Jeremy Bentham pointed out that ‘Rights’ is the child of law, from real laws come real rights, but from imaginary laws come imaginary rights. Human rights or jus naturale was regarded as merely an imaginary endowed by their creator with certain unalienable rights that among these are life, liberty and the pursuit of happiness.
right. Hume concurred calling natural law and natural rights as unreal metaphysical phenomena while Burke simply declared natural law as 'monstrous fiction' Others saw it as a formulation of the underlying principle on which all ideas of citizens' rights and political and religious liberty was based and the concept of universal rights took root. Philosophers such as Thomas Paine, John Stuart Mill and Henry David Thoreau expanded the concept. Thoreau was the first philosopher to use the term, "human rights" and did so in his treatise, 'Civil Disobedience'. This work has been extremely influential on individuals as different as Leo Tolstoy, Mahatma Gandhi and Martin Luther King. Gandhi and King, in particular, developed their ideas on non-violent resistance to unethical government actions from this work. The English philosopher John Stuart Mill, through his Essay on Liberty and American political theorist Thomas Paine through his essay, 'The Rights of Man' caused considerable sensation among the masses in the West while William Lloyd Garrison's writings in The Liberator in 1831 emphasized on the need to enlist his readers in "the great cause of human rights". 

The industrial revolution that started in England and soon spread to the rest of Europe was also an era that saw a number of human rights issues take center stage many of which are presently indisputably hailed as human rights issues. They included abolition of slavery, serfdom, brutal working conditions, starvation wages and regulation of child labour. These issues in turn led to the growth of trade unions and the concept of collective bargaining. Gradually the doctrine of laissez-faire was abandoned in favour of a welfare State.

The bloody war over slavery in the United States in 1861, came close to destroying a country founded only eighty years earlier on the premise that, "all men

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16 Labor unions brought about laws granting workers the right to strike, establishing minimum work conditions, forbidding or regulating child labor, establishing a forty hour work week in the United States and many European countries etc.
17 In the presidential election of 1860, the Republican Party, led by Abraham Lincoln, had campaigned against the expansion of slavery beyond the states in which it already existed. During the American Civil War (1861-1865) eleven Southern Slave States declared their secession from the United States, formed the Confederate States of America and fought against the U.S federal government (the 'Union'). This deadly war restored the Union and ended slavery and led to the Reconstruction Era (1865-1877).
are created equal”. The emancipation reforms of 1861 in Russia freed its serfs. However, neither the emancipated American slaves nor the freed Russian serfs saw any real degree of freedom or basic rights for many more decades. For the last part of the nineteenth and first half of the twentieth century, human rights activism remained largely tied to political and religious groups and beliefs. Revolutionaries pointed at the atrocities of governments as proof that their ideology was necessary to bring about change and end the government’s abuses.18

Marx critiqued the natural law theory of Human Rights and declared that it was too idealistic and ‘a historic’. Marx regarded the notion of individual rights as a ‘bourgeois illusion’ in a society where capitalists monopolized the means of production. Marxism viewed men and women as ‘specie beings’ and envisaged a society devoid of class conflicts. However till such an ideal scenario was attained, the State was to serve as a social collectivity and serve as a vehicle for social change. This led to total State control and the creation of totalitarian regimes. At the international level, Marxist theory proved incompatible with the functioning of a universal system of Human Rights and Communists governments maintained that the application of trans national norms were entirely a matter of exclusive domestic jurisdiction 19 and justified their alleged abuse of human rights in the pursuit of the prior claims of society. Thus in practice, the pursuit of the prior claims of society as reflected in the interests of the Communist state did result in the systematic suppression of individual civil and political rights.

The assault upon natural law was intensified during the nineteenth and twentieth centuries. John Stuart Mill propounded the utilitarian theory of rights mandating governments to maximize the total net sum of the happiness of their subjects. Karl von Savigny in Germany, and Sir Henry Maine in England, claimed ‘that rights are a function of cultural variables.’ However the positive theory propounded by the eminent jurist John Austin furnished the most serious attack on natural law and came to dominate legal theory through most of nineteenth century and

18 Refer: www.hrweb.org/history.html -A Short History of the Human Rights Movement
the former years of the twentieth century. Classical positivist philosophers denied an 'a priori' source of rights and assumed that all authority stems from what the State and officials prescribed. Classical positivist philosophers encouraged the belief that laws must be obeyed no matter how unjust or immoral. The anti-Semitic edicts of the Nazis, for example though abhorrent to moral law, were obeyed as positive law. The same is true of the immoral and cruel practice of apartheid for years in South Africa. It is pertinent to note that these unjust laws did prompt a reawakening and renewed appreciation for the natural rights theory and helped found its stamp in the UDHR.

The early part of the twentieth century also witnessed the growth of the Sociological Approach to Human rights. While American jurist Roscoe Pound catalogued interest as individual, public and social, propounded the theory of 'Social Engineering' and viewed law as a means to a social end, John Rawls advocated the theory of distributive justice.

Contemporary international human rights law and the establishment of the United Nations (UN) have important historical antecedents. Efforts in the 19th century to prohibit the slave trade and to limit the horrors of war are prime examples. In 1919, countries established the International Labor Organization (ILO) to oversee treaties protecting workers with respect to their rights, including their health and safety. Concern over the protection of certain minority groups was raised by the League of Nations at the end of the First World War. However, this organization for international peace and cooperation, created by the victorious European allies, never achieved its goals. The League floundered because the United States refused to join and because the League failed to prevent Japan's invasion of China and Manchuria (1931) and Italy's attack on Ethiopia (1935). It finally died with the onset of the Second World War (1939). 20 Around this period the famous writer H.G. Wells wrote "The Declaration of Rights" consisting of a short Preamble and ten Articles which was widely circulated in England and America initiating in its wake a large scale

20 http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/Anchor-International-46407
campaign. President Roosevelt sent him a reaction on 9 November 1939 and he also received enthusiastic response from Gandhi and Nehru and other prominent leaders. The essence of these emerging human rights principles was captured in President Franklin Delano Roosevelt’s 1941 State of the Union Address when he spoke of a world founded on four essential freedoms: freedom of speech and religion and freedom from want and fear. The calls came from across the globe for human rights standards to protect citizens from abuses by their governments, standards against which nations could be held accountable for the treatment of those living within their borders. These voices played a critical role in the San Francisco meeting that drafted the United Nations Charter in 1945.

Though the abolition of slavery, passing of factory legislation, promotion of popular education, trade unionism and the universal suffrage movement are all examples of recognition of human rights it was the rise and fall of Nazi Germany that gave the main impetus to the recognition and spurt in the growth of human rights as an unquestioned emerging branch of international law. The extermination by Nazi Germany of over six million Jews, Sinti and Romani (gypsies), homosexuals, and persons with disabilities horrified the world. Trials were held in Nuremberg and Tokyo after World War II, and officials from the defeated countries were punished for committing war crimes, "crimes against peace," and "crimes against humanity." The fact that positive law theory was used to justify obedience to iniquitous laws did become the central focus for much of the modern criticism of this doctrine and weighed in favour of the revival of the natural rights theory in the aftermath of the Second World War and during the deliberation of the Human Rights Committee headed by Eleanor Roosevelt preceding the formal adoption of the UDHR and reflected in the text of the UDHR. Thus though the term ‘human rights’ is coeval with that of natural law, the term ‘human rights’ as understood in the present sense is of recent origin emerging from the Post Second World War International Charters and Conventions.

21 The DAILY HERALD claimed to have a circulation of 30,000 copies in the UK alone.
23 http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Intro/using.htm
24 http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6_glossary.htm#Anchor-United-21200
The Struggle for Human Rights in Modern India: The advent of the British and the Indian Nationalist movement

The British came to India as traders. The Honourable East India Company (HEIC), was an early joint-stock company that was granted an English Royal Charter by Elizabeth I on December 31, 1600, with the intention of favouring trade privileges in India. The Royal Charter effectively gave the newly created HEIC a 21 year monopoly on all trade in the East Indies. In 1617, the Company was given trade rights by Jahangir, the Mughal Emperor. The Company created strongholds in Surat (where a factory was built in 1612), Madras (1639), Bombay (1668) and Calcutta (1690). By 1647, the Company had 23 factories, each under the command of a 'factor' or master merchant, and 90 employees in India. A royal dictate from Emperor Farrukhshiyar, in 1717, exempting the Company from the payment of custom duties in Bengal, gave the Company a decided commercial advantage in the Indian trade. Over the years the Company transformed from a commercial trading venture to one that virtually ruled India as it acquired auxiliary governmental and military functions, until its dissolution in 1858 following the events of the Sepoy Mutiny of 1857.

The Indian Independence Movement is fairly diffuse, incorporating various national and regional campaigns, agitations and efforts of both nonviolent and militant philosophy and involved a wide spectrum of Indian political organizations, philosophies, and movements which had the common aim of ending the British Colonial Authority as well as other colonial administrations in the Indian subcontinent. The initial resistance to the movement can be traced back to the very beginnings of colonial expansion by the British East India Company, as early as the middle and late 1700s. However the mainstream movement from the latter part of the nineteenth century was led by the Indian National Congress (INC). Prominent moderate leaders of the INC sought Dominion status within the commonwealth. The

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25 The Dutch East India Company was the first to issue public stock
26 The Company won the power of 'Diwan'i in Bengal after winning the Battle of Plassey in 1757, under Robert Clive. Their victory in the Battle of Buxar in 1764 won them the Nizamat of Bengal as well. Following the Permanent Settlement of Bengal shortly thereafter, the Company began to vigorously expand its area of control in India.
beginning of the early 1900s saw a more radical approach towards political independence with leaders like Lala Lajpat Rai, Bal Gangadhar Tilak and Bipin Chandra Pal advocating the Swadeshi movement involving the boycott of all imported items and the use of Indian-made goods in 1907. Millitant nationalism also did emerge in the first decades and culminated in the failed Ghadar Conspiracy during the First World War. The end of the war saw the Congress adopt the policies of nonviolent agitation and civil disobedience led by Mahatma Gandhi, Sardar Vallabhbhai Patel and Jawaharlal Nehru.

**The Karachi Declaration as a Precursor to the UDHR and the Indian Constitution:**

That India’s political destiny should be determined by Indian was put forth by Mahatma Gandhi as early as 1922. The right of ‘Self Determination’ was indeed the central theme of the freedom movement. Gandhiji declared “Swaraj will not be a free gift of the British Parliament; it will be a declaration of India’s full self-expression. That it will be expressed through an Act of Parliament is true but it will be merely a courteous ratification of the declared wish of people of India even as it was in the case of the Union of South Africa”.

At the 1931 Karachi Congress Session, the Indian National Congress at its 45th session adopted the resolution for ‘Fundamental Rights & Economic Programme’ and the provisions contained therein can well be hailed to be a forerunner of the UDHR that came to be accepted by the International Community in 1948. The Karachi Declaration raised 20 key issues which where Human Rights related. The first ten clauses of the Karachi Declaration can well be seen as a fore runner to the UDHR which formed the genesis for the ICCPR and ICESCR. That it was a precursor is indeed reflected in a comparative study of the two documents. (Refer Table I)

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28 Refer Annexure vi.
29 The ‘fundamental rights’ elaborated in Clause 1, Sub- Clause (i), (ii) and (iii) dealing with freedom of association, freedom of speech and freedom of conscience finds expression in Articles 20, 19,18 of the UDHR respectively and are reflected in Article 22, Article 19 and Article 18 of the ICCPR.
The backdrop to the framing of the Constitution of India

Soon after the World War II in Europe came to an end\textsuperscript{30} in July 1945, a new government came to power in the United Kingdom. The new British government announced its Indian Policy and decided to convene a constitution drafting body. Three British cabinet ministers called the ‘Cabinet Mission’ were sent to find a solution to the question of India's independence. The Cabinet Mission discussed the framework of the constitution and laid down in some detail the procedure to be followed by the constitution drafting body. The Constituent Assembly,\textsuperscript{31} which had been elected for undivided India held its first sitting on the 9\textsuperscript{th} of December, 1946. However as a result of the Partition under the Plan of June 3, 1947, a separate Constituent Assembly was set up for Pakistan. With the independence of India on August 15, 1947, the Constituent Assembly became a fully sovereign body.

Pursuant to the Partition, when the Constituent Assembly of India reassembled on 31\textsuperscript{st} October, 1947 the membership of the house was reduced to 299. With the independence of India on August 15, 1947, the Constituent Assembly became a full...
sovereign body. 284 members were actually present when the constitution was adopted on the 26th of November, 1949, and they appended their signatures to the Constitution as finally passed. The Constitution of India came into effect on 26th of January 1950.

The historic Objectives Resolution put forth by Pandit Nehru32 that echoes the essence of Human Rights and was adopted by the Constituent Assembly on January 22, 1947 sheds considerable insight into the philosophy of our Constitution and are reflected in her Preamble.

The Preamble to our Constitution serves, two purposes:(a) it indicates the source from which the Constitution derives its authority; (b) It also states the objects which the Constitution seeks to establish and promote.

Combining the ideals of political, social and economic democracy with that of equality and fraternity, the Preamble seeks to establish what Mahatma Gandhi described as ‘the India of My Dreams’, namely – “....an India, in which the poorest shall feel that it is their country in whose making they have an effective voice .... an India in which all communities shall live in perfect harmony.” The objectives and the basic structure of the Constitution embodied in its Preamble and text can be summed up to include- The Sovereignty of India; The Republican and Democratic form of Government; The Supremacy of the Constitution; Its Secular character; Securing Justice, Liberty, and Equality and Fraternity for all her people; provision of the Separation of the powers between the Executive, Legislature and the Judiciary; Federal Character of the Constitution; The mandate to build a welfare State contained in Part IV of the Constitution; Unity and integrity of the nation; Recognition of the ‘Rule of Law’; Judicial Review; Parliamentary system of Government; Principle of free and fair election recognizing the concept of universal suffrage; Limited amending powers of the Parliament under ART.368; and recognition of the independence of the Judiciary.

32 Refer Annexure VII for the text of the historic Objectives Resolution
Article 133 of the Indian Constitution states that India is a 'Union of States' although as Dr. Ambedkar rightly remarked the Indian Constitution is federal in structure and that the term 'Union' was used owing to the advantages that accrued with it. Part I of the Constitution of India echoes the spirit of Self determination and Sovereignty and furnishes details on the Union and its territories.

The aspect of a corresponding fundamental duty is well embedded in each of the various fundamental rights contained in PART III of the Constitution. Further none of the fundamental rights in PART III are absolute and contain within it the limitations. Never the less the Parliament, through the Constitution (42nd Amendment) Act, 1976 inserted Art. 51A, dealing with 'Fundamental Duties' and these duties bind all citizens. Though the constitution is silent regarding punishments in the event of violations of these fundamental duties, Courts in India have held that the penalties enshrined in domestic legislations pertaining to these areas of fundamental duties can be applied against defaulters and violators.

Universality of Human Rights viewed in the Backdrop of the Asian Perspective of Human Rights: In the World Conference on Human Rights, held in Vienna, in 1993 prominent leaders from Singapore and China made passionate statements concerning the Asian perspective of Human Rights, and denounced the concept of the universality of Human Rights on four broad and rather defensive grounds-

A) Primacy of economic development over civil and political rights implying that only after achieving economic development can civil and political rights be realized.

B) Primacy of State, society, and community over individual in 'Asian Culture' implying that the implementation of human rights implies the existence of a balanced relationship between individual human rights and the obligations of

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33 Refer Annexure VIII-A for the full text of Part of PART I of the Constitution of India

34 These advantages, Ambedkar explained were to indicate two things-(a) That the Indian federation is not the result of an agreement by the units and (b) that the components have no freedom to secede from it.

35 Refer Annexure VIII-E for the full text of PART IV-A of the Constitution of India.

36 The foreign minister of Singapore warned that "universal recognition of the ideal of human rights can be harmful if universalism is used to deny or mask the reality of diversity."
individuals toward their community.' This argument was based more on a cultural relativist position, resting on the premise that Asian culture and values are different from those of the West.

C) **Emphasis on national sovereignty and rejection of 'selective use of human rights standards':** Though none of the major proponents of the 'Asian perspective' categorically denied human rights as an international concern, these spokespersons rejected the present mode of international application of human rights by the superpowers and condemned 'Hegemony'.

D) **On the grounds of a Socio-political explanation of the 'Asian' perspective;** The proponents of the Asian perspective declared that before colonization, most of the Asian 'nations' had a highly hierarchical structure where the authoritarian center (king or emperor) loosely united local communities that had different levels of autonomy depending on their distance from the center. In the system that prevailed law has two aspects: authoritarian order from the center and local customs. Given this difference in value systems—the argument ran—Asia must be faithful to its own system of philosophical and political priorities.

In this context the researcher wishes to submit that the view put forth by a few leaders from Asia at the Vienna Conference is not a true reflection of the human rights position as showcased by the Constitution of India as originally envisaged by our founding framers of the Constitution and as interpreted by our judiciary. Though some Asian leaders denounced the concept of the universality of Human Rights at the Vienna Conference in 1993 and gave emphasis to 'cultural relativism' by adopting the argument that Asia must be faithful to 'her own system of philosophical and political priorities', our founding framers of our Constitution had imbibed the universal approach to human rights and when the Constitution initially came into force PART III Rights containing chiefly civil and political rights were treated as inviolable provisions while PART IV Rights encompassing ESC Rights were considered to be

37 For instance, Indonesian delegates to the World Conference acknowledged that 'the issue of human rights had ceased to be a bloc controversy and once again had acquired a life of its own in the consciousness of the international community.' Even the head of the Chinese delegation stated that 'the human rights issues can be discussed among countries.'

38 Singapore, Chinese and Indonesian delegation
unenforceable. Our founding framers did not contemplate an authoritative order but instead envisaged the creation of a Sovereign, Democratic Republic. The founding framers of the Indian Constitution had declared the rights contained in PART III of the Constitution to be ‘fundamental’ and ‘inviolable’. A unique feature is that the right to constitutional remedies in the event of infringement of any fundamental right is also contained in PART III and afforded by Article 32 of the Constitution of India. Thus the Indian Constitution bears ample consonance to the provisions of the UDHR and ICCPR. Article 37, in PART IV of the Indian Constitution reads that the provisions contained in PART IV are not enforceable but that these policies are ‘never the less fundamental’ to the governance of the nation and would form part of government policy, as directives to be progressively achieved subject to the economic capacity of the state and is in line with the underlying philosophy of ICESCR which calls for ‘achieving progressively the full realization of the rights recognised’ in it. Never the less by virtue of the Constitutional 25th Amendment Act, 1971, Art.39 clause (b) and Art.39 clause (c) in PART IV were placed on pedestal higher than that of all the fundamental rights in PART III. This Amendment Act was upheld by the Supreme Court in *Minerva Mills Ltd. and others vs. Union of India and others* (1980) S.C.C. 591 and holds good presently. The Forty Second Amendment Act, of 1976 went even further and strengthened the scope and ambit of Directive Principles of State Policy whereby the Amended Article stated that notwithstanding anything contained in article 13, *no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV 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*. These words in italics were substituted for “the principles specified in clause (b) or clause (c) of article 39” (w.e.f. 3.1.1977), earlier contained in Art.31 C by virtue of the 25th Amendment Act to the constitution. To

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39 Refer Article 37 of the Constitution of India.
40 Requiring the State to direct its policies so that the ownership and control of the material resources of the community are so distributed as best to subserves the common good
41 Requiring the State to direct its policies so that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
42 The main theme of this pronouncement was that the Constitution was based on the ‘bedrock of balance’ between Fundamental Rights and Directive Principles and to give one absolute primacy over the other would be to disturb this balance.
43 As on date (05/05/2008)
make the primacy of ESC Rights over the fundamental rights/civil and political rights enshrined in PART III of the Constitution of India abundantly clear the same Amendment Act also stated that "no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy" thus effectively taking away the right of judicial review. Through this far reaching consequence the researcher points out that in India too there was a conscious attempt on the part of the legislature of the day to give supremacy to ESC rights over civil and political rights and in so doing the government of the day had acted in quite the same spirit as the passionate claims made by the leaders from Singapore, Malaysia and China in the Vienna Conference. The researcher points out here that this Constitutional Amendment taking away judicial review and that sought to overrule the landmark decision of the Supreme Court in Kesavananda Bharati vs. the State of Kerala\textsuperscript{44} (wherein the Apex Court had declared emphatically that judicial review in indeed an inviolable feature forming part of the basic structure of the Constitution and therefore can never be taken away) was struck down by the Apex Court in the Minerva case. In Minerva Mills Ltd. and others vs. Union of India and others\textsuperscript{45}, the Apex Court struck down Section 4 of the Forty-second Amendment Act, 1976, but upheld the 25\textsuperscript{th} Constitutional Amendment Act placing the rights contained in Art.39 (b) and (c) relating to equitable distribution and ownership of material resources for the common good and prevention of the concentration of wealth and means of production to the common detriment respectively on a higher pedestal than crucial civil and political rights like right to equality and right to personal freedoms. Thus our own Indian experience shows how in the nineteen seventies there was a conscious tilt in parliament towards recognizing a superior nature of ESC Rights, quite like the stand adopted by South East Asian leaders in the Vienna Conference. Judicial activism and judicial review, the researcher submits has helped to check the untrammeled right of the Parliament to amend our Constitution and has ensured its consonance with the International Bill of Rights. In Pathumma v State of Kerala\textsuperscript{46} the Supreme Court declared that the Constitution aims

\textsuperscript{44} His Holiness Kesavananda Bharati Sripadagalavaru and Ors v State of Kerala and Another 1973 (4) SCC 225, AIR 1973 SC 1461.
\textsuperscript{45} AIR 1980 SC 1789 : (1980) 2 SCC 591
\textsuperscript{46} AIR 1978 SC 771.
at bringing about synthesis between Fundamental Rights and Directive Principles and this view has been reiterated time and again in subsequent cases. Thus the view adopted in the Vienna Conference holding that civil and political rights and economic social and cultural rights are mutually reinforcing and interdependent and are on par is indeed in consonance with the view put forth by our Apex Court while interpreting the Constitution. To sum up the Indian Constitution presently recognizes the inviolability of fundamental rights while upholding crucial ESC Rights that enjoin that the material resources of the community are to be distributed to sub serve the common good and that the operation of the economic system is to be equitable, seeking to bridge disparity to avoid common detriment and in so doing manages to strike a beautiful balance with the philosophy of the International Bill of Rights and the Asian perspective of Human Rights.

NATURE AND OBJECTIVES OF THE RESEARCH:

This thesis reflects an attempt by the researcher to examine the concept of Human rights and make a comparative study of the Indian Constitutional Provisions concerning protection of Human Rights with the human rights provisions contained in the International Bill of Human Rights (IBR). 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) and the International Covenant on Economic Social and Cultural Rights (ICESCR).

The underlying importance of taking up human rights as the subject matter for this research stems from the fact that unless human rights are made the focal point in good governance, India cannot progress, because sustainable development and economic progress cannot be achieved by any nation without the base line respect for human rights. Though India is 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
The growing divide between the haves and the have-nots and the lack of sustainable development in the country make the study of human rights protection mechanisms in the Constitution indeed relevant. The comparison of the human rights standards as laid down in her Constitution with the International standards laid down in the International Bill of Rights 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 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 Assembly 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 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

47 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 Report (HDR) of 2007-2008 released by the United Nations Development Programme (UNDP). For further reference refer- hdr.undp.org
48 Refer Annexure I for the full text of the UDHR.
49 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.
50 Refer Table II for status of International Instruments relating to Human Rights.
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.\textsuperscript{51}

The reason why the researcher has chosen the International Bill of Human Rights as the benchmark for comparison with the Constitution of India is given hereunder-

Though the UDHR was initially adopted as a mere resolution today it has become part of ‘\textit{jus cogens}’ or customary international law which binds \textit{all} nations of the world and has undoubtedly been hailed as the \textit{magna carta} of all modern international human rights instruments. The thirty Articles of the UDHR contain a basket of rights which have been incorporated into the two Covenants, ICCPR and the ICESCR to give teeth to these human rights provisions.\textsuperscript{52} The legally binding treaty status of the ICCPR and ICESCR and its wide acceptance by State Parties all over the world\textsuperscript{53} lends credence to the International Bill of Rights as the \textit{most important} of Human Rights instruments in the world presently. In India, Section 2(d) of the Protection of Human Rights Act, 1993 (PHRA) defines ‘human rights’ as “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India”. Thus the Constitution and the International Covenants constitute the source of human rights for the purpose of the definition. What is pertinent to note is that the term ‘International Covenants’ in this definition \textit{does not encompass all} International Covenants pertaining to human rights and that under Sec.2 (f) of PHRA “International Covenants” means the International Covenant on Civil and Political Rights \textbf{and} the International Covenant on Economic, Social and Cultural rights adopted by the General Assembly of the United Nations on the 16\textsuperscript{th} December, 1966. Since the corpus of International Covenants had considerable grown since the coming into effect of ICCPR and ICESCR, the National Human Rights Commission (NHRC) in India had recommended that the term ‘International Covenant’ for the purpose of the

\textsuperscript{51} Refer Table I for the Consonance the Constitution of India bears to the International Bill of Rights.
\textsuperscript{52} A country-by-country list of declarations and reservations made upon ratification, accession or succession can be seen at the web site of the Office of the United Nations High Commissioner for Human Rights \url{http://www.ohchr.org/html/menu3/b/treaty5.asp.htm}
\textsuperscript{53} As on 9\textsuperscript{th} June 2004 as many as 152 States Parties had ratified the ICCPR while the ICESCR was ratified by 149 State Parties.
definition should be widened to include other covenants and conventions pertaining to human rights as well. However as on 10\textsuperscript{th} December 1998, the outer limit for the period of this study, no amendment was made to Sec.2 (f) of PHRA and this explains why the researcher has chosen the comparison of the two Covenants, ICCPR and ICESCR with the human rights provisions in the Constitution of India for the purpose of this study.

Owing to the NHRC’s repeated submissions for amendment of this narrow definition to the Government, Sec.2 (f) of PHRA was amended in 2006 to also include “such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify”. Even so it is pertinent to note that no other Covenant or Convention has been notified by the Central Government in India to be included in the definition of “International Covenants” as yet\textsuperscript{54} making the International Bill of Human Rights indeed the apt benchmark for this comparative study even in the present context.

While at the national level, the Human Rights provision in most countries is protected by their Constitution in its most general sense, a constitution is the fundamental, underlying framework of government for a nation or state. The Constitution of India is a unique document that presently stands out as the longest written Constitution in the entire world and being the \textit{supreme law of the land} that embodies in express term Human Rights provisions the researcher indeed considers the Constitution of India as indeed the appropriate and ideal document or benchmark at the national level to form the basis for this comparative research study. Hence the comparison of the Human Rights provisions in the Constitution of India with the provisions of the International Bill of Human Rights.

To realize the above objective of the research the following general hypothesis has been framed, namely-

\textsuperscript{54} I.e. as on 1\textsuperscript{st} November 2008
'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.'

To test the above hypothesis the following issues/queries were raised and discussed namely-

- A study of the objectives of the UDHR, ICCPR and ICESCR

- A study of the objectives enshrined in 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.

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. As stated above, 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.

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.

This thesis consists of seven chapters. Chapter One, the Introductory Chapter deals with the concept of Human Rights and the underlying philosophy of the Indian Constitution wherein the researcher makes an attempt to understand the nature of Human Rights, very briefly trace its Historical evolution up to the passage of the Universal Declaration of Human Rights and examine 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 as a conscious struggle for self determination and the realization of certain basic fundamental freedoms for all her people. The researcher in this chapter strives to point 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. In this lies the importance of this study.

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 and highlights the innovative stand taken by the Apex Court in its ruling in *Keshavananda’s*\(^{55}\) 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

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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.

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)' outlines the derogable provisions pertaining to civil and political rights contained in the IBR and also hailed as first generation human rights. While the UDHR forms the genesis for the ICCPR and ICESCR it is universally acknowledged that the UDHR contains a veritable mixture of first, second and third generation Human Rights. The researcher in this chapter has culled out the civil and political rights provisions in the UDHR and has elaborated the corresponding substantive provisions of the ICCPR 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.

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 (Paragraphs 1 and 2),11, 15, 16 and 18 of ICCPRR are non derogable even in times of a Public Emergency, the Indian Constitutional provisions concerning emergency is dealt with in Articles 352 to 360. 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 in this Chapter with the researcher making out a case for consonance with the safeguards in the International Bill of Rights. The impact of the 42nd and 44th 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 fifth Chapter entitled, "Economic, Social and Cultural Rights in the International Bill of Rights and Corresponding Provisions in the Constitution of 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 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 Mills56 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 sixth Chapter is entitled, "Third Generation Human Rights in the IBR 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

56 AIR 1980 SC 1789.
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'. Also known as group rights, 'solidarity rights' or 'collective rights', third generation rights also encompass the Right to self-determination; Right to economic and social development; Right to a healthy environment; Right to natural resources; Right to communicate; Right to participation in cultural heritage; Rights to intergenerational equity and sustainability and Minority rights.

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 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 and other third generation human rights also find place in this chapter 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.

In the last chapter the researcher outlines 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 and PART XVIII besides 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. The researcher also draws 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 Detention58 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.

58 Vide Article 22 (3)