CHAPTER VI
INDIA AND THE COVENANT

This Chapter attempts to analyse that what has been India's approach on the different provisions enshrined in the Covenant and to what extent the provisions of the Indian Constitution are near the objectives the Covenant stands for. It also focuses attention on those factors which inspired the framers of the Indian Constitution to include the provisions of human rights known as fundamental rights in the Constitution.

To begin with, it seems appropriate to discuss those factors which helped in the development of the concept of human rights in India and inspired the framers of Indian Constitution to include the provision of human rights in the Constitution.

Human Rights in India:

In India, as in other countries, various religions have, from the earliest times, guided individuals that he should refrain from doing unto others what he would like being done to himself. Without this recognition of the rights of others there would have been no civilized society.1

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Though quite early in the history of India, caste became an essential feature of the Hindu Community. Hindu religious insight has always recognized the dignity of the individual by identifying the human soul with the "Absolute". Buddhism, with its doctrine of flux, and the concept of Nirvana, Christianity with its enunciation of the Fatherland of God, and Islam with its emphasis on the "brotherhood of man" have proclaimed the same doctrine. All religions have declared that injustice against one man is an offence against all men. Indian religions carried this doctrine still further and held that an offence even against an animal or a plant is a sin.

In the political sphere kinship was treated as a trust of the people. Panchayat system was yet another institution, which was used to redress the grievances of those who were experiencing injustice. However, this is also true that might very often replaced right. Decisions of the panchayat were not always above caste and power considerations. Again whatever may be the justification of caste it had increasingly become an institution of oppression.

Buddhism was one of the first notable revolts against caste system. Ever since the Indian religious preachers and reformers have carried the tirade against it and have put their efforts to restore freedom and
equality among all members of the Indian community. The Indian national movement for independence was committed to the eradication of caste and the so-called "untouchability" and to promote secularism, and equality of rights and peace for all irrespective of caste, religion, creed, or sex. It was, therefore, natural that when India gained independence these ideals were enshrined in its Constitution. The Preamble of the Indian Constitution affirms determination to secure for all its citizens, justice, social, economic and political, liberty of thought, expression of belief, faith and worship and to promote among them all fraternity, assuring the dignity of the individual and unity of the nation.  

It should be noted here that the Indian Constitution was finalized within a few months after the adoption of the Universal Declaration of Human Rights. The founding fathers of the Indian Constitution were keen to incorporate in the Constitution as many aspects of human rights as possible. Most of the civil and political rights, mentioned in the Universal Declaration

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See, the Preamble of the Indian Constitution.
as also in the Covenant on Civil and Political Rights, are found in our Constitution also.\(^3\) India's stand on different provisions of the Covenant and Comparative analysis of those provisions of the Covenant which have been incorporated in the Indian Constitution is given below.

**Right to self-determination:**

India has always been a strong supporter of the right to self-determination. The history of Indian freedom struggle for total independence and self-determination from colonialism in itself provides the genesis of India's stand for self-determination of peoples and nations from colonial subjugation and foreign domination in favour of total independence - political, economic, social and cultural. Perhaps, it was because of this, when India spelled out its

\(^3\)The Constitution provides a number of rights to the individuals in part III of the Constitution which have been termed as 'Fundamental Rights'. The expression 'fundamental' denotes that these rights are inherent in all the human beings and are essential for the individuals for blossoming of the human personality and soul. These rights represent the basic values of a civilized society and the Constitution makers declared that they shall be given a place of pride in the Constitution and therefore they elevated them to the status of fundamental rights. These rights are therefore calculated to protect the dignity of the individuals and create conditions in which every human being can develop his personality to the fullest extent.
foreign policy objectives after gaining independence, it inter-alia included to seek the end of colonialism. And, therefore, India joined by other Afro-Asian States continued to press the demand for granting of independence to all peoples and countries who were still in servitude.

In the sixth session (1951) of the General Assembly, India alongwith other likeminded States had successfully piloted a resolution which directed the Human Rights Commission to include an article on the right of all peoples and nations to self-determination. Consequently the Commission at its eighth session adopted a text on the subject which it decided to include as Article 1 in both draft Covenants. The article enunciated the right of all peoples and nations to self-determination, namely, the right freely to determine their political, economic, social and cultural status. It declared that all States including those having responsibility for the administration of Non-Selfgoverning and Trust Territories and controlling in whatsoever manner the exercise of the right by another people

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4 See, General Assembly Resolution 545 (vi). The draft resolution was sponsored by Afghanistan, Burma, Egypt, India, Indonesia, Iran, Iraq, Lebanon, Pakistan, the Phillipines, Soudi Arabia, Syria and Yemen.
should promote the realisation of that right in all their territories. It further stated that the right of people to self-determination shall also include permanent sovereignty over their natural wealth and resources.\(^5\)

However, when the draft Covenant reached the Third Committee in 1954 inclusion of this article in the Covenant was strongly opposed by the Western powers.\(^6\) But because of the efforts of Afro-Asian countries as well as of Socialist and a quite a number of Latin American countries the right to self-determination was finally included in the Covenant.

Thus when the question of self-determination was discussed, debated and finally the Article on self-determination was included in the text of the Covenant, India played a significant role.

It is to be noted here that when India ratified the Covenant it made reservation in connection with the applicability of the right to self-determination in India. According to the reservation the right to self-determination shall apply in India only to the peoples under foreign domination and provisions of this right as enshrined in the

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\(^5\)See the Article 1 of the draft Covenant.

\(^6\)The Western powers challenged the appropriateness of including in a convention on human rights, of an article on the rights of all people to self-determination. In regard to the paragraph relating to permanent sovereignty over natural resources, their opposition was more vigorous. See, the Indian Yearbook of International Affairs, 1966-67, vol.xv-xvi, p.600.
Covenant shall not be applicable to sovereign independent States, to a section of people or nations which is the essence of national integrity.\(^7\) This reservation was, perhaps, made keeping in consideration the potential dangers to the unity and integrity of India.

**Right to Life:**

Article 6 of the Covenant deals with the individual's right to life. It provides that the right to life shall be protected by law and no one shall be arbitrarily deprived of his life.\(^8\)

Provisions for the protection of right to life has also been provided under the Article 21 of the Constitution of India.\(^9\) It states that no person can be deprived of his life except according to procedure established by law.

Indian criminal law contains provisions for punishment with sentence of death for very serious crimes only. However, it is to be noted here that death penalty as a punishment even in these instances need not necessarily be meted out, for generally other punishments are also provided for the same offence depending upon circumstances of each case.

Further even when a court has awarded death penalty, the President and the Governors of the States are empowered

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\(^7\) See, the Declaration made by India at the time of ratification, Appendix III.

\(^8\) For details see Article 6 of the Covenant.

\(^9\) See Article 21 of the Indian Constitution.
under the Indian Constitution to grant pardons, commute, suspend or remit death penalty in appropriate cases.  

In addition, there are several procedural safeguards. For instance, if a session court passed a sentence of death, the proceedings shall be submitted to the High Court for confirmation without which the sentence can not be executed. The High Court has the power to direct further inquiry to be made or additional evidence to be taken or commute the sentence or annul the conviction. Appeal lies from the High Court to the Supreme Court in cases where the High Court has, on appeal, reversed an order of acquittal of an accused person and convicted him and sentenced him to death. The Criminal Procedure Code of India further provides that execution of sentence of death is to be postponed in case an appeal is pending before the Supreme Court. Moreover, when the conviction is for an offence punishable with death, judgement should state the special reasons for such sentence.

Thus, almost every effort has been made under the Indian Constitution to protect the right to life of an individual. And provision for death sentence has been made for rarest of rare cases or where no option is left.

10 Article 72 of the Constitution bestows the President with the power to grant pardons, commute or suspend or remit death sentence, and the Governor of a State by Article 161 of the Constitution, has the power to grant pardons, reprieve respites or remission of punishments or to remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.
It is to be noted here that the Covenant also permits the death penalty in the most serious crimes.\textsuperscript{11}

\textbf{Right against cruel and inhuman treatment:}

Article 7 of the Covenant provides that no one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment.\textsuperscript{12}

Indian Constitution and legal system also provide detail provisions against cruel and inhuman behaviour. Article 21 of the Constitution of India guarantees "personal liberty" and thereby prohibits any inhuman, cruel or degrading treatment to any person.\textsuperscript{13} Any violation of this provision attracts the provisions of Article 14 of the Constitution which guarantees equality and equal protection of laws.\textsuperscript{14}

\textsuperscript{11} See Article 6, paragraph 2, of the Covenant on Civil and Political Rights.

\textsuperscript{12} See Article 7 of the Covenant on Civil and Political Rights.

\textsuperscript{13} See Article 21 of the Constitution of India.

\textsuperscript{14} See Article 14 of the Constitution of India.
Apart from this the Constitution and also the criminal laws of India are applicable when the liberty and human dignity of an individual are encroached upon by the State or an individual by way of cruelty or inhuman or degrading treatment. In addition, the question of cruelty to prisoners is dealt with specifically by the prisons Act. In case of any excesses committed on prisoners by police or concerned authorities, the Indian judiciary particularly the Supreme Court is empowered to take the appropriate steps against responsible authorities. Thus the police or prison authorities can only carry out the sentences but they cannot exceed the legal boundaries of prescribed punishment.  

Right against slavery, servitude and forced labour:

Slavery and slave trade in all its forms are prohibited under the Covenant. Slavery, servitude and forced labour are prohibited and are made punishable under the Indian Constitution and Indian laws. Article 23 of the Indian Constitution embodies the right against exploitation and prohibits unpaid labour and other similar forms of forced labour. Further, the Supreme 

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15 See the Paragraph 50 of India's first report submitted to the Human Rights Committee, CCPR/C/10/Add.8, July 13, 1983 (hereinafter cited as Doc. CCPR/C/10/Add.8).
16 See the Article 8 of the Covenant.
17 See Article 23 of the Indian Constitution.
Court interpreted that remuneration below the minimum wages prescribed under the minimum wages Act 1948 falls within the purview of Article 23.\textsuperscript{18} Any contravention of this provision is punishable under and in accordance with the Bonded Labour System Abolition Act 1976.\textsuperscript{19} In addition, the Indian Penal Code provides for punishment of a person engaging in unlawful compulsory labour of any person against his will, and treats the offence as cognizable. The Indian Penal Code makes the offence of kidnapping or abducting any person for subjecting him to slavery as a cognizable offence and prescribes that whoever engages in such an offence shall be punished with imprisonment of either description upto 10 years and also fine. Further whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves could be punished with imprisonment even for life.

Thus the Indian penal code and other relevant laws consist strong provisions against heinous offences connected with slavery servitude and forced labour.

\textsuperscript{18} The Supreme Court held in the case of Sanjit Ray vs. State of Rajasthan that we must hold consistently with the decision that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the meaning of the words forced labour and attracts the condemnation of Article 23. Every person who provides labour or service to another is entitled at least minimum wage and if anything less than the minimum wage is paid to him, he can complain of violation of his fundamental right under article 23 and ask the court to direct payment of the minimum wages to him so that the breach of article 23 may be abated.
Right to Liberty:

Article 9 of the Covenant provides the right to liberty and security of person and prohibits arbitrary arrest or detention.

The same right has been protected under Article 21 of the Indian Constitution. It lays down that no person shall be deprived of his personal liberty except according to the procedure established by law. Article 22 of the Indian Constitution, in addition sets out that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice. Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest. And no such person shall be detained in custody beyond the said period without the authority of a magistrate.

Apart from this, the Supreme Court of India is empowered to issue the writ of habeas corpus, which is a prerogative process for securing the liberty of the person and also an effective means for immediate release.

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19 See, Doc. CCPR/C/10/Add.8, para 53.
20 See the Article 32 of the Indian Constitution.
from unlawful deprivation in a prison. Accordingly
the Court can command the production of the detained
person and inquire into the cause of his imprisonment.
The writ is applicable as remedy in all the cases of
unlawful deprivation of personal liberty.

Regarding the matter of compensation on account
of unlawful arrest, India has appended a declaration
while acceding to the Covenant to the effect that:
"Under the Indian Legal System there is no enforceable
right to compensation for persons claiming to be victims
of unlawful arrest or detention against the State". 21

Right to Liberty of Movement and freedom to choose
caridence:

The right to liberty of movement and freedom to
choose residence is provided under Article 12 of the
Covenant.

This right has been recognized under the Constitution
of India also. Article 19(1) (d) and (e) of the Consti-
tution bestows on all citizens the fundamental right to
move freely throughout the territory of India and to
reside and settle any part of India.

21 See, the Declaration made by India at the time of
ratification, Appendix III.
But it should be noted here that these rights are subject to the operation of any existing law imposing reasonable restriction on them in the interests of the general public. Question arises here that what is to decide that a restriction imposed on this right is reasonable? With this regard the Supreme Court of India laid down in the case of Bishambar Dayal Chandra Mohan vs. State of U.P., that "the expression reasonable restriction signifies that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of the public—the restriction which arbitrarily or excessively invades the right can not be said to contain the quality of reasonableness".

Apart from this a law providing for restriction in the interest of the security of the State would not be an unreasonable restriction of the freedom of movement, if the procedural and substantive requirements of the law with regard to these rights are complied with.

**Right to equality before law:**

The Covenant states under its Article 14 that all persons shall be equal before the courts and tribunals.

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22 See Article 19 of the Indian Constitution.

23 See Doc. CCPR/C/10/Add.8, para 68.
And in the determination of any criminal charge against him or of his rights and obligations in a suit at law, everyone shall be entitled to a fair hearing by a competent independent and impartial tribunal established by law. It further provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty and in determination of any criminal charge everyone shall be entitled to be informed promptly in a language which he understands of nature and cause of the charge against him to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his choice, to be tried in his presence and to defend himself in person or through legal assistance of his own choosing. And in case he does not have sufficient means to pay for it he should be provided such assistance without payment.

Nearly same provisions have been provided under the Constitution of India. Article 14 of the Indian Constitution stipulates that the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India. All persons

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24 See, Article 14 of the Indian Constitution.
are accorded equal treatment before the Indian courts irrespective of caste, colour or creed. And under Indian laws no one can be forced to plead guilty or be convicted unless his guilt is proved beyond doubt in accordance with the procedure established by the law. Adequate opportunity to the accused is granted at the time of the charge so that he may argue before the court in his defence. Thus, any person accused of an offence before a criminal court, or against whom proceedings are instituted has a right to be heard, to lead his defence, and to procure the services of the counsel of his choice.25

Regarding the free legal aid to those who does not have sufficient means to pay for the legal services the Constitution of India provides under its Article 21 the right to free legal services.

Right to freedom of thought, Conscience and religion:

Under Article 18 of the Covenant everyone is guaranteed the right to freedom of thought, conscience and religion which also include the right of freedom to maintain or change one's religion or belief.26 The

25 See Section 303 of the Criminal Procedure Code of India.

26 See Article 18 of the Covenant.
provisions of this Article are of great importance to India which comprises of people belonging to different religions, faiths and beliefs. The secular and democratic nature of Indian society demands mutual tolerance among different religions beliefs and faiths with full freedom to practise the respective religious belief or faith of any community.

The Constitution of India in Article 25 and 28 specially deals with the freedom of religion. It guarantees to all persons the freedom of conscience and the right to freely profess, practice and propagate religion. But it should be noted that the Constitution guarantees the right to all religions to profess, practise or propagate, but it does not enable any religious group to work against the same rights of another religious group and the Indian Penal Code treats the offences relating to religion such as injuring or defiling places of worship with an intention to insult the religion of any class, acts against any religion, disturb religious assemblies and utterances to wound the religious feelings of others as crimes and prescribes specified punishments.  

27 See Doc. CCPR/C/10/Add.8, para 96.  
28 Ibid, para 97.
In addition, the customary and codified personal laws of different communities residing in India, also provide for liberty of the children to develop their own religions convictions. Constitution of India prohibits imposition of religious beliefs by any educational institutions on the persons attending any such educational institution. And no student can be required to take part in any religious instruction that may be imparted in such an institution or its premises without the individual consent or without the consent of the guardian in case the student is minor.29

Right to freedom of expression:

The Article 19 of the Covenant states that everyone shall have the right to freedom of expression which will include freedom to seek, receive and impart information and ideas of all kinds.

This right has been guaranteed under the Constitution of India also. The Indian Constitution provides fundamental right to freedom of speech and expression under Article 19 to all its citizens. This right, however, subject to reasonable restriction on specified grounds.

29 See Articles 25 and 28 of the Indian Constitution.
Accordingly, restrictions on this right could be placed on the grounds of sovereignty and integrity of India, security of the State, friendly relations with foreign states, public order etc. Therefore, in view of the above, India made a declaration at the time of its accession to the Covenant that the application of this article to India should be in conformity with the provision of Article 19 of the Indian Constitution.

Right to participate in public affairs:

Article 25 of the Covenant provides to every citizen the right and opportunity without any distinction to take part in the conduct of public affairs directly or through freely chosen representatives to vote and to be elected at genuine periodic election held on the basis of equal suffrage and by secret ballot guaranteeing the free expression of the will of the electors and to have access on general aterms of equality to public service in his country.

The freedom of speech and expression guaranteed under the Constitution of India is subject to reasonable restrictions imposed by the State relating to (I) defamation; (II) Contempt of Court; (III) decency or morality; (IV) Security of the State; (V) friendly relation with foreign States; (VI) incitement to an offence; (VII) Public Order; (VIII) maintenance of the sovereignty and integrity of India.

See Doc. CCPR/C/10/Add.8, para 101.
Every Indian citizen has been guaranteed the right and opportunity to participate in the public affairs, elections and public services on equal without any kind of discrimination. The Constitution ensures free and fair elections based on principle of adult suffrage and conducted by secret ballot through direct participation of the voters. Moreover, in conformity with social philosophy of India and with a view to ensure adequate representation to all sections of the society, the Constitution provides for legislative reservations to scheduled castes, scheduled tribes, Anglo Indians and backward classes.

Regarding the opportunity to the public services the Constitution guarantees equality of opportunity to all citizens in the public services. Article 16 of the Indian Constitution deserves special attention here which provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and no one shall on the ground of religion, race, sex, caste ect. be

32 Election in India are governed in addition to the Constitution by the Representation of the Peoples Act 1950 and 1951, the Delimitation Act 1972, the Scheduled Caste and Scheduled Tribe orders Act 1960, the Registration of Electoral Rule 1960, the Conduct of Election Rule 1961, and by many other statutory rules and orders. See, Doc. CCPR/C/10/Add.8, para 129.

33 Ibid, para 131.
ineligible or discriminated against in respect of any employment. But it should be noted here that the special provisions have been made under the Constitution for the upliftment of the poor and deprived sections of the society. Therefore appointments under these provisions will not constitute the violation of the Article 16 of the Constitution.\textsuperscript{34}

**Remedies available under Indian Constitution to protect the rights enumerated in the Covenant:**

The Covenant imposes an obligation upon the member State to adopt the measures under their respective legal and political systems to give effect to the rights recognised under the Covenant.\textsuperscript{35} In this regard, detailed provisions are already available under the Indian Constitution for the protection of individual's civil and political rights.

\textsuperscript{34}Clause 4 of the Article 16 of the Indian Constitution provides that nothing in this article or clause (2) of the Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes.

\textsuperscript{35}See Article 2 para (2) of the Covenant.
The Indian Parliament has the power to legislate on matters relating to human rights which are embodied in the Constitution as fundamental rights; directive principles or other constitutional rights. The judiciary particularly the Supreme Court of India under Article 32 of the Constitution and the High Courts of various states under Article 226 of the Constitution have jurisdiction to give appropriate relief for violation of any of the fundamental rights. In addition, to these courts, the criminal courts at different levels have jurisdiction with respect to certain human rights involving criminal charges.

The Indian legal system enables the individuals to legally challenge the violation of their rights. The fundamental rights guaranteed under the Constitution vest the individual with legal capacity to challenge the measures adopted by the State which affect or threaten to affect his or her civil and political rights. For enforcement of civil and political rights an individual can approach the High Courts of the States and the highest court of the land that is the Supreme Court. 36

The Courts have wide powers to entertain civil and criminal matters and to make enforceable orders. In criminal matters the remedies are acquittal, release on

36 See, Doc. CCPR/C/10/Add.8, para 11.
bail or commutation of sentence etc. The criminal penalties may be fine, imprisonment or other punishments. In civil matters, the remedies are by way of damages, specific performance or injunction. In case, where fundamental rights of an individual is infringed by a legislative measures, resort can be had to the Supreme Court or the High Court challenging such measures as ultra vires the Constitution. Where a government official is involved in the violation of rights of an individual the aggrieved person may seek remedy through writ petition.\(^\text{37}\)

Thus most of the rights, enumerated in the Covenant, have already been provided under the Indian Constitution with proper legal safeguards. But there are still certain rights which have been enshrined in the Covenant, but they are not guaranteed by the Constitution of India. These rights include right to privacy, right to travel abroad, right to be tried without undue delay, right to provide legal assistance and right of prisoners to be treated with humanity. Therefore, efforts should be made to take necessary step, in accordance with the constitutional processes to adopt such legislative or other measures as may be necessary to give effect to these rights.

\(^{37}\) In India the Supreme Court and High Courts have jurisdiction to issue prerogative writs against unlawful administrative action and for protecting the fundamental rights of the individuals. See Article 32 and 226 of the Indian Constitution.