CHAPTER IV

International Covenants on Human Right

Introduction

This chapter attempts to unpack the inter relation with the International Covenant on Human Right vis-à-vis the Constitution of India. Their Co-relation shall reveal that not only do they overlap each other in certain aspects but also provide a fresh lease of life for the advert of many more new human rights in the light of changing circumstances.

The purpose of securing human rights as such are to provide protection to these rights against the abuse of power committed by the organs of State to establish institutions for the promotion of living condition of human being and for the development of their personality and at the same time to provide effective remedial measures for obtaining redress in the extent these rights are violated Karel Vasak has aptly remarked that the human rights, which are essentially individual in character, for they are essential individual in character, for they are meant to be enjoyed by the individuals constitute a social phenomenon by virtue of those for whom they are intended."

ORIGIN EVOLUTION OF HUMAN RIGHT

Concept of Human Right

The concept of Human Rights, means the minimum right of an individual verses his own state is as old as political philosophy since from ancient time it is clear Human Right concept is as old as doctrine of ‘natural rights’ which founded by natural Law the expression human rights’ is of recent origin which was emerging after the end of the second world war. Every human being is entitled to certain natural right human right which every individual must have against other public authority and the State as a member of human family. These human right which irrespective of any consideration as considered If these human rights guaranteed by the written Constitution they are called as Fundamental rights because these rights are fundamental Law of the state. The creation of human right is from the position of natural right as rightly defined by the United Nations in Human Rights Questions and Answers 1987. Thus Human Rights are not the creation of any legislation but assumption of principles of natural right. Human rights are inherent in nature and without which we cannot live as human being these rights are to fully develop our intelligence, dealing and our conceives and to satisfy our spiritual and other things.

The Human Right traditionally known as ‘natural right’ that the court can mold relief to meet the exigencies of the specific circumstances this was decoded in the case Golaknath Vs. State of Punjab

From above it is clear that the importance of the concept of natural right which defined by many jurist and the credit of giving birth to natural Law goes to Greek in 384 322 B.C. the Greek philosopher Aristotle and his more logical interpretation of the natural Law theory He defined natural Law as ‘reason
unaffected by desire’ which embodies the basic principle of justice and morality having universal validity independent of time and place. Even he added that the natural Law have emanated from the Human conscience and not form the human mind which are more valuable for human mind.

According to Greek natural Law philosophy Roscoe Pound, this Law is not only for particular class but for all custom and the Validity which were not indifference to natural Law principles.

Natural Law in Roman system the natural Law philosophy found an expression in the Roman Legal system division namely jus civil-jus gentian and jus natural. The Civil Law called jus-civil was applicable only to Roman citizens. The Law which Govern. Roman citizen as well as foreigner Was jus-gentian it include universal principles of natural Law and both these Law merged together known as jus natural means it sum of those principles which ought to control human conduct because founded man as a rational and social being

Basically natural Law based on the rational and reasonable against what is arbitrary what is natural against what is convenient what is for social good against the personal will. Thus natural Law was based on the rational and reasonable needs of a man’s nature The Natural Law theory which give birth to the natural right theory which are closely associated with the modern concept human rights.

John Locke was the chief exponent of natural rights theory a new interpretation of the natural Law and social contract theories became more or less necessary. From above it may be noted that the concept of natural Law, and so also that natural right theory underwent changes in different periods in accordance with times and circumstances.

Concept of Natural Right

The conceptof natural right is envolved and develop in the course of time this theory isthe natural Law. Theories propounded by Grotius, Locke and Rousseau the rise of humanism the natural Law became open to rational inquiry free from its former religious trapping.

The whole idea of natural rights if based on the assumption that irrespective of his merit as an individual in his personal or moral capacity man is at least equal to all others in human worth. These natural justice occupy an important place in Indian Law.35

UDHR 1948 which was taken by the U.N. General Assembly by adopting this declaration Beside this declaration other two covenant were adopted the U.N. General Assembly in 1966 as:

a) The Covenant on civil and Political Rights,
b) The covenant on Economic, Social and cultural Rights

India must “ strive For the promotion and observance of the rights recognized”36
From above Human rights denote all those rights which are inherent in our nature and without which we cannot live as human beings.\(^{37}\)

Human rights are the rights which are possessed by every human being irrespective of his or her nationality, race religion, sex etc. simply because he or she is a human being.\(^{38}\)

In other words, the only qualification for possessing human right is being human. Rights are available to every human notwithstanding the fact that the same are provided to him/her their municipal/national in Law. Basically Human Rights are a progeny of international Law, Human Rights found their existence on the international statute book. For the first time in a grand manner in the Universal Declaration Of Human Rights, 1948\(^{39}\)

However, with the passage of time considering the mankind’s increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection, human rights started leaving imprints on the municipal Law as well. In municipal/ national laws, the Human Rights came to recognized as fundamental Rights, basic rights, natural rights, common right etc.

**Conventions on Human Rights**

The conventions on Human Rights are popularly known as “International Bill of Human Rights” The UDHR was adopted and proclaimed by the General Assembly of the United Nations on 10 December 1948. The commission on Human Rights at its second session From 2 to 17 December 1947 established three working groups. First on the declaration, Second on the covenant and third on the implementation. The Universal Declaration consists of Preamble as noted above and 30 Articles covering both civil and political rights and economic, social and cultural rights. In the preamble which refers to the faith in fundamental human right in dignity and worth of the human person and the equal rights of men and women because they considered, and rightly too, it to be the “foundation of freedom, justice and peace in the world”.

The rights proclaimed in the universal declaration of human right may be classified into four category. This “International bill of human rights” which comprises of the following :-


b) The international covenant on civil and political rights, 1966 (ICCPR).

c) The international covenant on economic, social and cultural rights, 1966 (ICESCR).

d) The optional protocol to the international covenant on civil and political right, 1966.

These covenant which U.N. affirmed in the charter of U.N. and their determination 6 to promote social progress and better standards of life in larger freedom; it also refers to the pledge taken by the member state to achieve, in co-operation with the United Nations the promotion of universal respect for the observance of human rights and fundamental freedom. Through this U.D.H.R. it achieves standard of common for all peoples and all nation every individual and every organ of the society not only to national
but also international security universal and effective recognition and observance, both among the people of member and their jurisdiction.\textsuperscript{40}

Although the United Nations had in tacit terms indicated people’s determination to reaffirm their faith in fundamental human rights.\textsuperscript{41}

The same per se was not sufficient as it lacked clarity in what human rights are as they were undefined. Therefore, for this reason a categorical statement during all human rights was required at international level. Consequently, the Universal Declaration of Human Rights to be enacted.

It is regretfully submitted that, mere declaration of human rights also was not sufficient and this came to be realized for the next two decades. In the circumstance, the ICCPR and the ICESCR, came to be enacted in the year 1966. The reason for the advert of these covenants was that where there is a right, there is a remedy that is ‘ubi jus ibi remedium,’ but UDHR only spelt right not spelt rights not remedies. It was realized that a right without remedy is no right in practicality. The beauty of ICCPR & ICESCR was that it bound the states party to it to implement the covenants. These covenants have achieved immense success at international level qua almost the entire globe is signatory to it. As many as 167 nations across the globe are to the ICCPR and as many as 7 nations have signed it but not ratified it but not ratified it. There are 18 nations which haven’t signed the ICCPR. India has not only signed but also ratified. The ICCPR likewise, ICESCR is signed and ratified by 160 nations barring 25 who have neither signed it nor ratified it and 7 who have signed it but not ratified it.\textsuperscript{42}

The enactment of two different covenants in 1966 marks the era of water-tight compartmentalization of rights viz, civil & political rights on one hand and economic, social and cultural right on other hand. It appears that this a welcome step in the further progress of civilization in the 20\textsuperscript{th} century by engulfing finer grace of human civilization.

\textbf{The Foundation Of International Human Rights Law}

The Universal Declaration of Human Rights is agreed to be the foundation of internationally recognized rights. It is recongnized by member Nations of United Nations organizations under several treaties.

The core principles of rights of civilians first set out in the UDHR which involves universal value, as universality interdependence and indivisibility, equality and non-discrimination UDHR 1948 which also represents the universal recognition that the basic rights and fundamental freedom are inherent to all human beings, inalienable and equal applicable to everyone, and that every one of us is born with freedom equal right and decent life. On the ground of nationality, place of residence, gender national or ethnic origin, color,
religion, Language or any other status on 10 December 1948 international community made commitment uphold dignity and justice for all.43

**Brief of the Universal Declaration of Human Right Norms reflect in the fundamental Rights of Indian Constitution:-**

The concepts of rights is for protection of the individual From oppression and injustices. The rights providesto all standard of ife to the people of the memer of UNO. It is clear that these rights are independent, inalienable and in voidable this is only one reason these rights are Universal.

UDHR 1948—which is for everyone has a right to live with privacy without any slavery. Then should not be slavery, cruel treatment or arbitrary arrest, ensuring equal status and protection before the law of the Counts.

While Framing of the Constitution on attainment of Independence came into the force, the commitment to the cause of Human Right was more than reflected in the Final draft of Indian Constitution. Preamble of the Constitution which includes the idea of socialistic pattern of society.

**Object and Scope of the Preamble :-**

The basic function of the Preamble is to explain certain facts which are necessary to be explain before the enactment contained in the Act understood. This preambles object and policy of legislation is to seek remedy against evil or inconveniences.

This preamble which ensure social economic and political justice. Liberty of thought, expression, belief, faith and worship, equality of status and opportunity to all without any distinction as to race, caste, sex, religion, place of birth etc.44

**In GopalanV.State of Madras**45

It was contended that the Preamble to Indian Constitution which seeks to give India a ‘democratic’ Constitution should be the guiding star in its interpretation and hence any Law made under Art. 21 should be held as void if it is offered against the principle of natural justice, for otherwise the so-called fundamental right to life and personal Liberty would have no protection.

Under Part III of the Constitution fundamental Right which have been described as the basic human rights by the Apex Court.
Article 13 of the Constitution which ensures the justifiability and enforceability of fundamental rights. As Articles 13 (1) is prospective in nature. All pre-Constitution Law’s inconsistent with fundamental Rights will become void only after the commencement of the Constitution. Clause (2) of the Article 13 which prohibits state for passing and implementing any law which infringes fundamental right of subject of the Constitution. Such Laws will be against the basic law and constitution to the extent of contravention.  

Article 14 – Equality and Equal Protection of Law

The Indian Constitution guarantees right to equality through Articles 14 to 18. “Equality is one of the magnificent corner-stones of Indian democracy.”

Thommen J., in IndraSawhney V. Union of India,

The theme of article 14 of Constitution provides security of justice before the Court without any discrimination as to gender, caste, creed, religion etc.

It involved two concepts First negative concept implying the absence of any special privilege in favor of any one that all are equally subject to the ordinary Law of the Land and that no person, whatever be his rank, or condition, is above the Law. Second positive concept ‘Equal Protection of Law’ is positive in nature. It does not mean that identically the same Law should apply to all persons or that every law must have a universal application within the country irrespective of difference of circumstance. It denotes equality of treatment in equal circumstance. It implies that among equals the law should be equal and equally administered, that the like should be treated alike without distinction of race, religion, wealth, social status and political influence.

It may be worthwhile to note that Art. 17 of the Universal Declaration of Human Rights 1948 declares that all are equal before the Law and are before the Law are entitled without any discrimination to the equal protection of Laws.

“Basic Feature of the Constitution of India is equality and any treatment of equals unequally or unequal’s as equals will be violation of basic structure of Constitution of India”

Constitutional Provisions

As compare to Universal Declaration of Human Rights Article 1 All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

This Article 1 of UDHR 1948 which is similar to Preamble of Indian Constitution We The People Of India having solemnly resolve to constitute India into a Sovereign, socialist, secular Democratic Republic and to secure to all its citizens : Justice Liberty Equality and Fraternity.
Article 7 of UDHR All are equal before the Law are entitled without any discrimination to equal protection of the Law. All are entitled to equal protection against any in incitement in such discrimination. As compare with Article 14 of Indian Constitution Equality before Law and Equal protection of Law- The State shall not deny to any person equality before the Law or the equal protection of Law within the territory of India.  

Constitution of India is the Supreme Law of the Land and all Laws which passed by the important organ of state legislature must be consistent with the provisions of the Constitution “Equal protection of the Law” means that all persons similarly circumstances shall be treated alike both in the privileges conferred and Liabilities imposed by the Laws Equal Law should applied to all in same situation and there should be no discrimination between one person and another.

Thus The “ Concept of Rule of Laws “ According to A.V.Dicey the absolute supremacy of legal spirit, another significance which Dicey attributed to the Concept of Rule of Law was “ equality before the Law or the equal subjection of all classes to the ordinary Law of the Land administered by the ordinary Law courts. This Rule of Law is the basic Feature of the Indian Constitution and hence it cannot be destroyed even by an amendment of the Constitution under Article 368 of Indian Constitution under Article 14 in Criminal justice administration come before the Supreme Court cases.

In Maneka Gandhi Vs. Union Of India.

The petitioner was refused a passport arbitrarily and therefore it was argued on behalf of the petitioner that the violation of the right to the personal Liberty should be examined in the Light of the provision of Article 14 and the provisions of the Passport Act. The passport was impounded of following arbitrary procedure by the authority. In this case the increasing judicial trend of imposing the requirements of principle of natural justice on different types of bodies and different types of administrative action. An authority for the proposition that the principles of natural justice are an integral part of the guarantees of equality assured by Art. 14 In this case it was held that the ‘procedure established by Law’ should be just fair and reasonable In this case Article 14 which strike out the arbitrariness of the state action in this case the principle of natural justice.

From above case Law the concept of Natural Justice is the concept of administrative Law means substantial justice fundamental justice, universal justice or fair play in action it is great humanizing. It is for doing justice. This Maneka Gandhi Vs Union of India case Justice Bhagwati the Apex Court is held as under:

It is held by the Hon’ble Apex Court that the abuse of powers by the C entral Government and its authority can not be lightly accepted as true. The Government should exercised the power of granting passport in reasonable manner when there is no appeal on the decision of passport authority.

In Mithu Vs. State Of Punjab
In this case Section 303 of Indian Penal Code was unconstitutional on the ground that the classification between persons who commit murders whilst under the sentence of imprisonment for the purpose death Sentence mandatory in the case of the former class and optional in latter class was not based on any rational principle. In this it is the discretion of the court which sentence to be awarded which will determine the matter on the nature of offences committed by on accused this judicial discretion is not available to a life convict under Section 303

Article 2 UDHR : This article is in parallel to the provisions of Article 15 of the Indian Constitution. This provision is as to treating its citizens and its subject equal in all spheres without any discrimination based on any fact as to birth place, caste, gender and on the basis of creed etc.

However, this Article of human rights permits and allows the member Nations to enact laws in the parallel with the provision of Universal Declaration form above it is clear that social equality means no discrimination can be made against any individual on ground of religion, race, caste, sex or place of birth regarded the use public tanks, wells, roads, parks hotels, shops, places of entertainment etc. for example, it would be permissible for state to reserve seats or grant fee concession to members or backward classes in public education institutions.

The concept social justice also is the one of the principle to be achieved by the special application of general principle of equality included under Article 14

The basic idea of social justice is that though this principle the State should attempt to achieve the socio economic justice and thereby the development of all in the direction of constituting the society on the principle of equality as mentioned in Article 14.

Article 15 clause (4) It include and inserted by first Amendment to the Constitution in the year 1951 with a view to authorized the State to make a special provisions regarding education of weaker and backward classes. Article 15 clause (1) make a use of the word ‘only’ it suggest that the state is not to discriminate on the ground mentioned and specified but the state may effects the discrimination on any other ground not mentioned in Article 15 (4) As well as the state may discriminate on the one of the ground specified in Article 15 (1) along with other grounds. The discrimination for this purpose means unfavorable treatment on the specified grounds only and thus the Constitution of India through Article 15 tries to achieved the two purposed; one is the discrimination as such to be prohibited as well as to be permitted the demarcation has been provided whereas tribe to be achieve the purpose of achieving the social justice to a certain extend. 54

This Article 15 the Apex court struck down to permit special provision for the advancement of any socially and educationally backward classes of citizens or for the schedule castes tribes overriding Art. 29 (2) of Constitution the schedule caste and schedule Tribe also OBC reservation is for facilitated these in educationally backward it can be treated as a class for reservation This was held in Champakam Dorai Rajan Vs. State of Madras 55 1951 SCJ 313 In the case Vasundara Vs. State of Mysore And Andhra 56
It was held that the prescription of domicile as a qualification for admission into educational institution is permissible on the basis of reasonable classification.

**In Balaji Vs Sate Of Mysore**

The court held that the excessive reservation of 68% was declared void in Balaji court observe red that in the interest of the weaker sections of the society need to be adjusted with interests of the society as a Whole.

Article 21 (2) of UDHR and Article 16 of the Constitution

Article 21 (2) The provisions of Art. 21 gives equal opportunity in public services whereas in Indian Constitution as per the provision of art.16 there is equal opportunity in service maters and employment in the State. This Article empowers everyone as to equal opportunity for their employment. The citizens of India can’t be deprived of their right on any ground of birth place, gender, religion etc. There are certain exception to his rule of equality For Example, the Government can reasonable restrict this right by for framing rules regarding age, experience and educational qualifications, which make it easier the members of the Schedule castes and Tribe to secure jobs in government departments.

Article 19 of UDHR compare with Article 19 of Constitution of India Article 19 UDHR Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers And the Indian Constitutional provision Article 19 Protection of certain rights regarding Freedom of speech, etc. (1) All citizens shall have the right (a) to freedom of speech and expression; (b) all citizens shall have the right to assemble peaceably and without arms; (c) to form associations and unions etc.

This Article was thus intended to protect these rights against state action other than in the legitimate exercise of its power to regulate private rights in the public interest.

This right to freedom of speech and expression to all citizens. This right comprises the right to express one’s views and opinions and to communicate, including through words action, writing picture, print films and movies. In democratic state this right is an inalienable component. This right is from the point of view of individual society and nation these freedoms are regarded as, an essential condition for the development of individual and the democracy. But these freedoms are regarded as, an essential condition for the development of individual and the democracy. But these freedoms are not absolute and therefore subject to the limitation, It is true that no society can grant the unlimited right in a civil society for the reasons that unlimited freedom may create problems in the society while enjoying the society, while enjoying the same freedom by the other members of the society

**In Bennett Coleman &Co. Case**
The court held that the newsprint control order was challenged under provision of article 19 and 14 in write petitions filed by several newspaper companies and several readers in this case state controlling newspapers and interfering with the freedom of press because of this is the direct control which violation of the freedom of speech and expression.

**In Secretary Ministry of Information And Broadcasting Vs Cricket Association of Bengal**

In this case while widening the scope of Liberty of conveying feelings or thoughts using spoken words. Apex Court laid down that the Government has no monopoly on electronic media radio and aakashwani but citizen has right to spread their views and to received information through this media. The right to information has been recognized as a right inherent in Constitution. Apex Court laid down as to liberty of conveying feelings or thoughts, using spoken words. It also includes right to information of knowledge.

Article 9 of UDHR And Article 21 Indian Constitution Protection of life and personal Liberty :- No person shall be deprived of was life and personal liberty except for the procedure established by Law “ This Article is very short but is very important and its scope is very Large Because it deals with the life and personal Liberty

Prior to Maneka Gandhi’s case 1978 this Article was applied in a limited sense to the executive action and not applied to the legislative action But after the Maneka Gandhis case this article was applied to the executive action as well as to the legislative action. The right to life enshrined in Article 21 of the Constitution, a protection available to citizens and non-citizen In this case the procedure establish by the Law should be fair, just and reasonable and also supreme court widened the scope of the word personal liberty and form this case onward, the supreme court has given the extended meaning to the Article 21 so as to cover in many more dimension of life and personal liberty.

The court stipulated that the test of reasonable of such a law which deprives a personal liberty. Article 14, 19 and Article 21 are not mutually exclusive, but interrelated.

In this Maneka Gandhi’s Case Justice Bhagawati observe “That the scope of Art. 21 of our Constitution is to much wide covering right of personal liberty of man. This liberty covers variety of rights giving status of fundamental rights which are enshrined in Art.19 of the Constitution which gives extra protection of citizens. Further in the case of Kharak Singh Vs State of U.P

The question relating to personal liberty was before the Supreme Court. The Supreme Court gave a wider definition of the words personal liberty. Court also struck down the regulation 236 (6) of the U.P. police regulations as violation of Article 21 which was held unauthorized instruction into one’s residence and held that domiciliary visit by the police during night was violated of right to sleep and comfort included under Article 21 as fundamental right. [This domiciliary Visit by Police]

**In Olga TellisVs. Bombay Municipal Corporation**
This case Law which is popularly known as the pavement dwellers case. Court held that the word ‘life’ Article 21 includes the ‘ right to livelihood’.

Article 11 (2) of UDHR 1948 No. one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international Law at the time when it was committed nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

As compare to the Article 20 of the Indian Constitution which stated as protection in respect of conviction for offences (1) No person shall be convicted of any offence except for the violation of a law in force at the time of the commission of the act charged as an offence nor be subjected to penalty greater than offence that which might have been inflicted under the Law. The law is applicable which is in force of the time of incident.

This Article 20 which is for the protection and remedies available to the accused person but the safeguard given under the Article 20 they are as fundamental Rights.

Those safeguards are:

i) Protection against ex-past Facto Law Article 20(1)
ii) The protection against double jeopardy Article 20 (2)
iii) The protection against self – incrimination Article 20 (3)

i) Protection against ex-past Facto Law Article 20 (1):

The ex-post. Facto Laws means the Law’s which have a retrospective effect. This means that if an act the date of its commission, it cannot be an offence at the subsequent date to its commission.

The prohibition under this clause is just for conviction and sentence only and not for the prosecution and trial. The legislature has the power and authority to pass the legislation prospectively or retrospectively and therefore the criminal Law as affect the individual liberty should not be retrospective effect generally.

Whereas a civil liability may be imposed retrospectively and therefore for imposing the criminal liability it must be a prospective one.

Retrospective Criminal law means the law which makes the post act as criminal act and import a penalty the past act when that act was committed it was not prohibited by the Law and not punishable similar a sometimes a Law may increase the punishment for offence which has already being committed a particular act which the penalty has been increased. This protection is not applicable in a certain situation such as preventive detention or a security proceeding.

Similarly this protection is available only against the punishment i.e. imprisonment and not against the punishment that is imprisonment and not against trial or proceeding under the criminal retrospective Laws.
In Kedar Nath Bajoria Vs. State of West Bengal

In this case, offence committed by the accused in 1947 but in 1949 the punishment for the same offence was enhanced. The Honourable Apex Court ruled that the offence committed in the year 1947 is not liable for more punishment or severe punishment.

Under this provisions of ex-post-facto Law, the enhanced punishment cannot be imposed by the Amended Act, but the accused can take advantage of the beneficial provisions of the ex-post facto Law that the Law will not be affected by Article 20 (1)

ii) The protection against double jeopardy clause (2) of Article 20

This provision is to the effect that if any person is convicted any punished for committing any offence, he should not be tried and convicted for the same offence again and again for second time under the law in force. This article prosecution and punishment has been interpreted in a narrow way and therefore scope of this protection is also narrow one. Thus provision must be started before a general court and as a result of which the person is punished. This protection can be availed by the person otherwise this protection is not available If the person is prosecuted but not punished then also this protection is not available. The common Law rule ‘nemo debet vis vexari’ which means that no man should be put twice in peril for the same offence.

iii) Protection Against self-incrimination Article 20 clause (3)

Constitution of India also provides safeguard to the effect that no person charged as accused compelled to be a witness against himself. This means that the any person against whom a Criminal charged is levied such person can take the benefit of this protection but there are certain proceeding which cannot be regarding as charging the person criminally such as contempt of court proceeding and therefore the protection of this privilege is also made limited but the supreme court has tried to extent the applicability of this protection from the time the charge or FIR is registered and the proceeding before the investigating officers.

Article 20 protection against self-incrimination such that a person accused of a crime cannot be compelled to be a witness against section 161 (2) of the Cr.P.C., 1973 provides similar protection against self-incrimination.

In State of Bombay Vs. Kathi Kalu
Self-incrimination can only mean conveying information based upon personal knowledge of the person giving information and cannot include merely the mechanical process of producing document in court which may throw light on any point in controversy, which does not contain any statement the accused based on his personal knowledge.


Article 18 Everyone has the right to freedom of thought conscience and religion, this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private to manifest his religion or belief in teaching practice, worship and observance.

This Article which is resembles with Article 25 of the Constitution of India Article 25 Freedom of Conscience and Free profession practice and propagation of religion (1) subject to public order morality and health and to the other provisions of this part (part iii) all persons are equally entitled to freedom of conscience and the right freely to profess practice and propagate religion.

As per this article the judicial pronouncement in the Re. Stanislaus Vs. State of Madhya Pradesh68

In this case propagate religion means to spread and publicize religious view for edification of others. The right to propagate religion does not include the right to convert and forceful conversion interferes with an individual’s ‘Freedom of conscience’

In Bijoe Emmanuel Vs State of Kerala69

This case was popular as the name ‘National Anthem case’ the students belonged to the sect of jehovahs refusing to sing National Anthem, student stood silent when the Anthem was being sung Right to remain silent was held to be an right to freedom of speech and expression.

Article 22 of UDHR and Article 29 of the Constitutional Law of India Article 22 – Everyone as member of society, has the right to social security and is entitled to realization through national effort and international Co-operation and in accordance with the economic, social and cultural rights in dispensable for his dignity and the free development of his personality.

Similar Provision reflects in Indian Constitution as Article 29 which is as Protection of Interest of Minorities (1) any section of the citizens residing in the territory of India or any part there of having a distinct language, script of culture of its own shall have the right to conserve the same.

For this purpose they have granted the Fundamental Rights for the purpose of protecting and preserving their distinct Language script or culture through the educational institutions which are it-self protected by Article of the Constitution which say about the fundamental Right of the minorities. Which was necessary as a result of Article 29 itself. Any educational institution maintained by any section of citizen under Article 29 such institution cannot make the discrimination on the ground of religion, race, caste or Language for the purpose of admission in to such institution.
In Ahmedabad St. Xaviers college Society vs. State of Gujarat

In this Article 30 (1) is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions.

Article 26 (3) of the UDHR 1948 and Article 30 of the Indian Constitution Article 30 of the Indian Constitution Article 26 (3) of UDHR

Parents have a prior right to choose the kind of education that shall be given to their children.

Article 30 of Indian Constitution – Right of minorities to establish and administer educational institutions

In D.A.V. College Bhatinda vs state of Punjab

In this case the Panjab university issued a circular prescribing the medium of instructions in all affiliated colleges and therefore the institution running an educational college having the Hindi medium of instruction’s and the institution belong to minority challenge the circular before supreme court as violating their F.R. under Art. 30

Article 17 (2) of UDHR 1948 And Article 31 of the Indian Constitution Article 17 (2) No. one shall be arbitrarily deprived of his property Article 31 This Right to property Art 31 under which the right to property was fundamental right was omitted by the Constitution 44 in Amendment Act, 1978

Article 08 of the UDHR 1948 everyone has the right to an effective remedy by the competent National tribunals for acts violating the fundamental rights granted to him by the Constitution or by Law

Article 32 of the Constitution of India Remedies for enforcement of rights conferred by this part that is Part III (1) The right to move the supreme court by appropriate proceeding for the enforcement of this rights conferred by this part is guaranteed.

This Article is itself a fundamental right this article is very important and significant that the one of the framer of the Constitution Dr. B.R. Ambedkar called it a very heart and soul of the Constitution. This article provide a guarantee quick and summary remedy in case of breach of fundamental right person may directly approach to supreme court without resorting to dilatory procedure or process from lower to higher court.

In Case of Fertilizer Corporation Kamgar Union vs. Union of India

The supreme Court declare this article as an integral part of the basic structure of the Constitution and further observed that the fundamental right could have been meaningless in absence of the provisions of article 32 in the Constitution.

In People’s Union for democratic Rights vs. Union or India
The court rejected the argument that such ‘public interest litigation would create arrears of cases and therefore they should not be encouraged. Even the traditional doctrine of Locus standi means the person whose fundamental right has been infringed can approach to Supreme Court.

The supreme court directly and Article 32 (2) empowers the court to issue directions or order or writs such as habeas corpus, mandamus, certiorari, quo warranto and prohibition.

Other Important Articles of ‘Universal Declaration Of Human Right’ And Constitutional Articles as:

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<td>5</td>
<td>Article 25 (1) Right of everyone and a standard of living adequate for his and his family</td>
<td>Article 39 (a)</td>
</tr>
<tr>
<td>6</td>
<td>Article 26 (1) Right to education and free education in elementary and fundamental stages</td>
<td>Article 41 &amp; Article 45</td>
</tr>
<tr>
<td>7</td>
<td>Article 28 Right to a proper Social order</td>
<td>Article 38</td>
</tr>
</tbody>
</table>

Certain rights enumerated in UDHR are not specifically found in the Constitution of India are as under:-

a. Anyone should not be ill-treated or tortured or punished Article 5
b. Right to recognition everywhere as a person before Law Article 6
c. Right to full equality to a fair and public hearing by an independent impartial tribunal Article 10
d. Right to be presumed innocent Until found guilty according to law in public trial Article 11
e. Everyone should not be subjected to interference in his privacy, family, domestic matters Article 12
f. Right to leave any country including his own, and to return this country Article 13 (2)
g. Right to nationality Article 15 (1)
h. Right to Marry and found a family Article 16 (1)
i. Right to take part in the government of his country Article 21 (1)

j. In view of Article 25 (1 & 2) everyone has right of standard living, motherhood and childhood are entitle for special care Article 25 (2)

k. Right of parents to choose the kind of education for their children Article 25 (3)

l. Right of everyone to freely participate in the cultural life of the community to enjoy arts and to share in scientific advancement and its benefits Article 27 (2)

m. Right of everyone to the protection of morale and material interests resulting from any scientific, literary or artistic production or which he is author Article 27 (2)

   Despite the Fact that foreside rights are not specifically enumerated in the Constitution of India they are carved by way of judicial pronouncements as an emanation of Article 21

   Certain Rights enumerated in UDHR are not specifically found in Constitution of India are as under:

   a. Right not to be subjected to torture or to cruel inhuman treatment or punishment Article 5

   b. Everyone be equally treated and recognized in view of (Article 6)

   c. Right to life (Art. 3) Everyone has the right to life, liberty and security of person.

   d. Abolition of slavery (Article) 4

   e. Everyone are equal before the Law (Article) 7

   f. Everyone is empowered to approach competent authority (Article) 8

   g. No arbitrary arrest (Article 9)

   h. Right to Fair hearing (Article 10)

   i. Presumption of innocence (Article 11)

   j. Right to privacy (Article 12)

   k. Right to freedom of movement (Article 13)

   l. Right to asylum (Article 14)

   m. Right to nationality (Article 15)

   n. Right to marriage (Article 16)

   o. Right to own property (Article 17)

   p. Right to freedom of thought, conscience and Religion (Article 18)

   q. Right to freedom of opinion and expression (Article 19)

   r. Right to assembly and association (Article 20)

   s. Right to take part in the Government (Article 21)

After the Universal Declaration of Human Right 1948, the very important covenant such as International Covenant on Civil and Political Rights (ICCPR) adopted and opened for signature and ratification by the UN General Assembly Resolution on December 16, 1966 came into force on March 23, 1974. Part III of Constitution of India confers upon individuals a number of basic human rights called fundamental Rights, the rights conferred upon individual under part III of the Constitution are called Fundamental Rights because they are not being given by the ordinary Law but they are given by the Constitution which is the Supreme
law of the land, since they are given by the Constitution, they cannot be changed or modified by the ordinary process of legislation. Fundamental rights serve as limitation or restriction upon the executive or legislative powers of the state.

This is made clear by Article 13(2) Lays down that the State is prohibited from enacting any law or Rule or Act which infringes the rights conferred under the Constitution. While an ordinary legal right is defined as an interest protected by law and is enforceable in the Court of Law and Fundamental right which is guaranteed by the Constitution, cannot be changed by and ordinary process of legislation and can be altered or modified only by the Amendments of the Constitution. Article 32 of the Part III of the Constitution guarantees the rights the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by the part III of the Constitution. Many of the Civil & Political Rights enumerated (contained) in the International Covenant on Political and Civil Rights 1966 are also mentioned in Part III of the Constitution as Fundamental Rights. Such :-

**Preamble**: The keystone of this Covenant 1966 are the charter provisions concerning the Human rights and the UDHR, 1948, which is rightly reckoned as the mine from all instruments on human rights have quarried

**INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS [ICCPR] & THE CONSTITUTION OF INDIA**

Certain rights enshrined in ICCPR are specifically enumerated in the Constitution of India while certain few of them are not. Following tabular list would make it aptly clear:-

<table>
<thead>
<tr>
<th>RIGHTS</th>
<th>ICCPR</th>
<th>CONSTITUTION OF INDIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to life and personal liberty</td>
<td>Art. 6(1) &amp; 9(1)</td>
<td>Art. 21</td>
</tr>
<tr>
<td>Prohibition of traffic in human beings and forced labour</td>
<td>Art. 8(3)</td>
<td>Art. 23</td>
</tr>
<tr>
<td>Protection against arrest detention in certain cases</td>
<td>Art. 9(2) &amp; (3) &amp; (4)</td>
<td>Art. 22</td>
</tr>
<tr>
<td>Right to movement</td>
<td>Art. 12(1)</td>
<td>Art. 19(1)(d)</td>
</tr>
<tr>
<td>Right to equality</td>
<td>Art. 14(1)</td>
<td>Art. 14</td>
</tr>
<tr>
<td>Protection against self-incrimination</td>
<td>Art. 14(3)(g)</td>
<td>Art. 20(3)</td>
</tr>
<tr>
<td>Protection against double-jeopardy</td>
<td>Art. 14(7)</td>
<td>Art. 20(2)</td>
</tr>
<tr>
<td>Protection against ex-post facto law</td>
<td>Art.15(1)</td>
<td>Art. 20(1)</td>
</tr>
<tr>
<td>Freedom of conscience and free profession, practice and propagation of religion</td>
<td>Art.18(1)</td>
<td>Art. 25</td>
</tr>
<tr>
<td>Right of expression of thoughts and feelings using spoken language.</td>
<td>Art. 19(1) &amp; (2)</td>
<td>Art. 19(1)(a)</td>
</tr>
<tr>
<td>Right to assemble peaceably and without arms</td>
<td>Art. 21</td>
<td>Art. 19(1)(b)</td>
</tr>
<tr>
<td>Right to form associations or unions</td>
<td>Art. 22(1)</td>
<td>Art. 19(1)(c)</td>
</tr>
<tr>
<td>Right to equality of opportunity in matters of public employment</td>
<td>Art. 25(c)</td>
<td>Art. 16(1)</td>
</tr>
<tr>
<td>Government is prohibited from making Law which discrimination of its citizens.</td>
<td>Art. 26</td>
<td>Art. 14 &amp; 15(1)</td>
</tr>
<tr>
<td>Protection of interests of minorities and right of minorities to establish and administer educational institutions</td>
<td>Art. 27</td>
<td>Art. 29 &amp; 30</td>
</tr>
</tbody>
</table>

**JUDICIAL PRONOUNCEMENTS & ICCPR**

Certain rights which are though not specifically enumerated in PART III of the Constitution of India are still fundamental rights of the Constitution by way of judicial pronouncements. Notably, some of these creatures of statutory interpretation are also reflected in the ICCPR.

a. Right to travel abroad\(^7\) U/A. 21 to COI – Article 12(2) of ICCPR

b. Right to Privacy\(^7\) U/A. 21 to COI – Article 17(1) of ICCPR

c. Right to fair trial\(^7\) U/A. 21 to COI – Not specifically found in ICCPR

d. Right to speedy trial\(^7\) U/A. 21 to COI – Article 9(3) of ICCPR

e. Right to legal assistance\(^7\) U/A. 21 to COI

f. Right not to be imprisoned for inability to fulfill a contractual obligation\(^7\) U/A. 14, 19 & 21 – Art. 11 of ICCPR

g. Right to compensation of unlawful arrest and detention\(^7\) U/A. 21 to COI – Art. 9(5) of ICCPR

h. Right to human dignity\(^7\) U/A. 21 to COI – Art. 10(1) ICCPR

i. Right to information\(^7\)

j. Right to Education\(^7\)

k. Right to National Flag Hoisting\(^7\)

**INTERNATIONAL COVENANTS ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 1966**

**Preamble:** The Preamble of the covenant of Economic, Social and Cultural Rights, 1966, is almost same as the preamble of the Covenant on Civil and Political Rights. The reason of this similarity is that common source for both the covenants are U.N. Charter provisions and Universal Declaration of Human Rights, 1948
The preamble of the covenant states that, in accordance with UDHR, if conditions are created whereby everyone may enjoy his economic Social and Cultural rights as well as his civil and political rights.

**INTERNATIONAL COVENANTS ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND CONSTITUTION OF INDIA**

<table>
<thead>
<tr>
<th>RIGHTS</th>
<th>ICESCR</th>
<th>CONSTITUTION OF INDIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to equal pay for equal work</td>
<td>Art. 7(a)(i)</td>
<td>Art. 39(d)</td>
</tr>
<tr>
<td>The children’s childhood and youth be protected and promoted moral material things, exploitation. They should be developed in healthy manner. They are treated in dignity with freedom. All the opportunities and facilities to provided to them.</td>
<td>Art. 10(3)</td>
<td>Art. 39(f)</td>
</tr>
<tr>
<td>Right to work, to education and to public assistance in certain cases</td>
<td>Art. 6(1)</td>
<td>Art. 41</td>
</tr>
<tr>
<td>Right to just and humane conditions of work and maternity relief</td>
<td>Art. 7(b) &amp; 10(2)</td>
<td>Art. 42</td>
</tr>
<tr>
<td>Right to living wage etc. for workers</td>
<td>Art. 7(a)(ii) &amp; (d)</td>
<td>Art. 43</td>
</tr>
<tr>
<td>Right to early childhood care and their academic care ear of children below the age of six years</td>
<td>Art. 13(2)(a)</td>
<td>Art. 45</td>
</tr>
<tr>
<td>Right to raised level of nutrition and standard of living and improved public health</td>
<td>Art. 11</td>
<td>Art. 47</td>
</tr>
</tbody>
</table>

These are the international covenants and the comparative study of the Constitutional provisions of the Constitution of India. Although women constitute a majority of the World’s population, there is still no society in which women enjoy full equality with men. Every woman and girl is entitled to all human rights civil, political, economic, social and cultural on equal terms with men, free from discrimination. Women and girls also enjoy certain human rights specifically linked to their status as women.

**Convention on the Elimination of All forms of Discrimination against Women (CEDAW)**
The Preamble of CEDAW states, “discrimination against women violates the principles of equality of rights and respect for human dignity; is an obstacle to the participation of women, of equal terms with men, in the political, social, economic and cultural life of their countries; hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and oh human.”

UNESCO :- The United Nations Educational, Scientific and Cultural Organization came into existence in November 1946, and was recognized as a specialized agency of the United Nations in December 1946. The organization aims at promoting world peace by constructing defenses for peace’s in the mind of men.

UNICEF

United Nations International Children Emergency Fund (UNICEF)

The name of the United Nations International Children’s Emergency Fund (UNICEF) was charged and hence forth it is known as the United Nations Children’s Fund but the acronym (UNICEF) has been retained. The Economic and Social Council supervise and review the work of the UNICEF periodically. The main function of UNICEF is to provide assistance to the Governments of developing countries in improving the life of children.

Scope And Definitions of Human Rights And Fundamental Rights

The fundamental Rights and Human rights are one and the same. The only difference is that the fundamental rights are enforceable by the court of Law and to means to enforce and Human Rights is also provided in the form of Fundamental right

This Human Right Word include fundamental rights as well as the Human Rights which are not expressly made fundamental Rights therefore it seems that both the concepts to a certain extent be regarded as one and the same for promoting the interest individual against all authority It is for the first time the definition Of Human Right provided in the Human Right Act 1994 Human Rights are defined in section 2 (d) of the Act.

It Means the Human Right means the right relating to life, liberty equality and dignity of individual and the rights included in the international conventions of Human Rights those enforceable by the courts in India These Human Right and fundamental Rights in terms of the definition of Human Right given under the protection of the human rights. For deciding the scope it is necessary to study carefully the definition of human rights and the fundamental right given under the Constitution of India

If we see the definition of Human Right seems to be a narrow one for the reason that the definition of Human Right only relates to the only rights relating to life, liberty, equality and dignity. But the fundamental Rights of the Constitution of India are wider and includes not only the above rights but in addition to that
also includes other rights as against the exploitation of children by employee in a factory Article 23 and 24 of the Constitution.

Similarly the rights of the minority are also mentioned but these rights are not reflects in Human Rights Therefore the expression given in the definition of H.R. to the extent that the rights given under international covenants and enforceable in the courts in India

**National Human Right Commission 1993**

In pursuance of a resolution of the General Assembly adopted in 1966, the Economic and social council asked the Human Rights commission of the U.N. to consider the question of creation of National commission of Human Rights to perform certain function relating to the observance of the international covenant on Human Rights.

This Act is to provide for the Constitution of a NHRC and SHRC in States and Human Rights courts for better protection of Human Rights. The Commission recommended that the question of establishment of National commission of human rights in each Member state of the United Nation ought to be decided by each government of the member state keeping in view the traditions and institutions of each country. Since then the Human Rights commission has several times stressed the need of the creation of NHRC in each Member of State. The basic purpose of setting up the commission is for strengthen the machinery for more effective enforcement of fundamental Rights of the people.

Vienna Declaration and programmed of Action adopted by the Vienna conference of Human Rights on June 25, 1993 it recommended that every state ought to provide an effective framework of machinery or institution is for provide remedies in cases of violation human right. It was after this word conference this was the reason that the several states have establish National Commission for Human Rights : India was also a party to the ICCPR are the ICESCR this both conventions were adopted by the United Nations General Assembly on 16th December 1966 these rights embodied in these covenants substantially protected by the Constitution of India. For the efficiency an transparency in administration the Human rights which changing social realities and emerging trends in the nature of crime and violence in society method of this act deals with the situation. This is the reason for emergence of this Act.

**Role of Human Right Court**

Section 30 of protection of Human Rights Act makes a provision for Human Right court in each district by the state Government with the concentrations of chief Justice of concern High court. The state Government specify a session court as a human Rights court but this provisions used the word “may” thereby it is not again compulsory or mandatory for the state to constitute the Human Rights courts the result is that the state Government has not constituted the Human Rights courts. The basic purpose of Human Right Act it is doubtful whether the sessions court will be able to decides the matter relating to Human Right
speedily because the simple reason that the sessions court are overburden with all kinds of cases new fillings and also pending lot therefore the matters relating to Human Right will be disposed of speedily is doubtful.

The another important point is that the protection of Human Rights does not prescribed specifically the jurisdiction of sessions court relating to violation of Human Right.

There for it is expected that in the interest of protection of Human Right effectively and speedy disposed of matter of Human Rights a separate Human Rights court is expected to established.

**Role of National Human Rights commission And Human Right Courts**

The NHRC is constituted by the provision of protection of Human rights act with a view to make effective the enforcement of fundamental Rights it has perform its duties and role in a expected manner in the cause of enforcement of Human Right as well as fundamental Right. This NHRC has done a job in the matter of custodial death, rape and torture in appreciable manner for the reason that the commission has issued a directives to all district magistrate and police superintendent of District to the effect that Matters and the cases relating to the above subjects be communicated are informed to the commission within twenty four (24) hours from the time of incident. This directive plays a very important role in prevent of torture, custodial death and rape. These directives are also indirectly warned the Police that if they abused their power or misuse their power then they may be punished. There for National Human Right Commission play a very important role in these matters

This National Human Right commission has also plays a very important role of petitions filing by in Supreme Court under Article 32 of the Constitution for protecting the rights of people court observe to drive court observed to drive out of the territorial limit of India of any person must be withy the procedure of Law and nobody in India will be authorized to take into their hand the Laws and to drive out unwanted person from the territory of India form above it is clear that NHRC is the recommendatory body it can recommend to the Government to take the step in the cause of Human rights but it us not compulsory for the state to accept recommendation and to act accordingly.89

**Conclusion :**

This Chapter which deals with International Conventions in which consist of Human Rights which are enumerated in International convention on Civil and Political Rights but are neither enumerated in Indian Constitution as Fundamental right non- recognized by supreme courts as Fundamental Right.

1) Prohibition of Death Sentence for crimes committed by person below 18 years of age and its execution on pregnant women.
2) Special Protection and treatment of juvenile person.
3) Right to marry and to found a family

In this chapter the comparative study of Indian Constitution and its important provisions related to International national Convention on human right which gives idea about the rights provided by international and state to protect the basic rights.
This chapter which secure human right and power given to state to establish institution for the promotion of living condition of human being and for the development of their personality. In this chapter origin evolution of Human Right. The creation of Human Right is from the position of natural right as rightly defined by the United Nations in Human Rights. Human Right are not the creation of any legislation but assumption of principles of natural right the concept which was also held in Golaknath case. The concept of Natural Right also defined by the research scholar. The Universal Declaration with its two covenants as covenant on civil and Political Right and International covenant on Economic, Social and Cultural Rights with the foundation of international Human Right Law.

The Human Right norms reflect in Fundamental Rights in Indian Constitution. The preamble of UDHR 1948 which resemble of Indian Constitution. The object and scope of the preambles are also similar in nature so as to ensure social, economic and political justice. Liberty of thought expression, belief, faith and worships equality of status and opportunity all without any distinction as to race, caste, sex, religion, place of birth etc. In Gopalan Vs. State of Madras the Article 21 define. In Indra Sawhney Case Article 14 which compare with Article 17 UDHR 1948 different articles with leading case laws.

Other important Articles of Universal declaration of Human Right And Constitutional Articles as Article 23 (1) or UDHR compare with Article 41 Article 23 (2) with compare to Article 39(d) Article 23(3) with Article 43 etc.

ICCPR and Constitution Of India Article 6 (1) & 9 (1) ICCPR with Article 21 of Constitution Of India the same comparison with ICESCR and Constitution Of India other important laws such as CEDAW which states discrimination against women and the rights provided to women. The important UNESCO , UNICEF, NHRC, SHRC and the role of Human Right Courts in India are also define in this chapter.