CHAPTER – IX

CONCLUSION AND SUGGESTIONS

9.1 Conclusion:

Human rights enshrined under International Covenants, however impressive they may seem and sound, will have very little impact on the community for which it is intended if they are not justiciable. To be justiciable, the legal systems, both international and national, must contain effective mechanism capable of determining whether or not there has been compliance with the obligations imposed under International Human Rights Covenants. The point that needs to be emphasized here is that, each of the UN nine core human rights treaties obligates the States Parties to adopt necessary legislative changes at the domestic level to realize the human rights guaranteed under the treaties. The reasons behind seeking legislative changes at the domestic level are clear: firstly, that the legal status of international treaties at the domestic level differ from State to State owing to the their constitutional provisions and practice, secondly, that the human rights violations occur at the municipal level and not at international level (in peace time) and thirdly, that it is predominantly an issue between a State and people residing in its territory, therefore domestic incorporation of human rights through legislative measures is expressly and specifically called for and appropriate one.

However, what is to be done if the State party fails to domesticate the treaty rights through internal legislative changes? What international sanctions could be imposed on States for non-compliance with human rights treaties? It is interesting note that none of the UN nine core human rights treaties contemplate any sanction for their non-compliance. Under the Charter of the UN, the Security Council may initiate action only when there is a large scale violation of human rights in a State and that too when the situation is one which might threaten the peace and security in the world. Non-compliance of human rights treaty is a matter to be resolved as per the terms of the treaty and the UN Security Council has minimal role to play in this regard.

At the international level, each of the UN nine core human rights treaties has got inbuilt provision for Reporting System to supervise treaty compliance. However,
the respective treaty body Committees does not have enough powers to compel the State Parties to comply with the treaty obligation nor they have any power to impose sanctions for non-compliance. Unlike World Trade Organization Agreements, the human rights treaties do not prescribe any time limit within which State Party is required to give effect to the treaty provisions by making legislative changes at the domestic level. This is understandable, because, under human rights treaties, a State incurs obligations for the benefit of its people and not to other States, in the sense that no other State gets any beneficial interest. The non-compliance of human rights treaty by a State does not affect the interest of any other State except to the extent of the rights of its nationals residing in the non-compliant State. Further, human right is such an issue which is predominantly between a State and people residing in its territory and it depends upon various issues such as political, social, cultural and economic conditions prevailing in a State. For example, guaranteeing certain human rights such as, right to education, right to health, right to work, right to social security etc., require huge amount of resources in terms of money and qualified staff. However, “time bound” implementation of human rights treaties is desired depending upon the internal Constitutional set up and resources available in the State. A State may need time and international co-operation (in terms of money, technology, qualified staff) in guaranteeing certain human rights such as, right to education, right to health, right to work, right to social security etc.¹ As far as Civil and Political rights are concerned, like right to life, personal liberty, equality, privacy, right against torture, freedom of speech and expression, etc., a State Party need no international co-operation or assistance for their immediate implementation and it is submitted that a State Party is under immediate obligation to respect and ensure such rights with immediate effect.

It is in this context that the human rights treaties differ from other international treaties such as trade and commerce and accordingly the obligations under the human rights treaties have been classified as 1) Absolute and Immediate obligations,

¹ Such rights are found in ICESCR which is basically progressive in nature. However, ICESCR is no longer progressive in nature because of the effect of 10th December 2008 Optional Protocol to ICESCR, that provides for individual complaint mechanism.
2) Progressive obligations, 3) Obligation to provide Effective Judicial Remedies, and 4) Legislative obligations.  

The nature of “absolute and immediate obligations” is that it requires State Parties to take all necessary/appropriate measures to give effect to human rights stated under the treaty. What are “necessary/appropriate measures” has not been defined in any of nine core UN human rights treaties and accordingly it is left to the State Parties to decide what “necessary/appropriate” measures are to be initiated given the political, social, cultural and economic conditions prevailing in their respective State. This may include legislative, judicial and administrative measures as well. The second type of obligations is “progressive” in the sense that the State Parties are given time to accumulate resources to implement certain rights such economic and social rights (ICESCR) in a phased manner. The “effective judicial remedy” is central to the realization of human rights and the independence of the judiciary in this regard must be ensured. State must separate judiciary from the executive in the public services of the State to ensure independence and autonomy. Mere recognition of the right is meaningless unless there is effective judicial remedy. The fourth type of obligation “legislative measures” is most desired step to give effect to treaty rights. Once, treaty rights are incorporated into the corpus juris of a State, it binds all agencies/machineries of the State and enhances the better protection of human rights. The other key players in this process namely executive and judiciary will have to act and there is no scope for escape citing the requirement of an enabling legislation by the Parliament.

Unlike in the United States and European countries, the legal status of international treaties under the Constitution of India is not clear. In United States, Germany, France, Switzerland, international treaties are part of the law of the land and in Commonwealth countries an enabling legislation is required to give effect to treaties at the domestic level. India being Commonwealth country, the common law approach to treaties has left its footmark and continued even after independence and adoption of the Constitution. In India, except Article 51(c) - which is non-justiciable - only directs State to “foster respect” for international treaty obligations, there is no specific provision under the Constitution that determines the legal sanctity of

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2 See Chapter 3 for detailed discussion on the nature and classification of obligations under human treaties.
international treaties. Further, the Constitution of India does not make any distinction between human rights treaty and other treaties and prescribes no procedure either for ratification or for their implementation. Under the scheme of the Constitution, Union Executive (Central Government) enters into treaties by virtue of Article 73 read with Entry 14 of List 1 in VII Schedule, but its powers as far as implementation of treaty is “subject to the provisions of the Constitution”. Accordingly, the implementation of human rights treaties is also subject to the provisions of the Constitution and since such treaties are in the nature of creation of new rights or modification of rights and this subject being the prerogative of the Parliament under the scheme of the Constitution, Union Executive is not in a position to implement such treaties of its own. In fact, the framers of the Constitution wanted every treaty to be placed before the Parliament for debate and necessary approval. Hence, the role of the Union Executive, as far as human rights treaties are concerned, is one that sets the ball rolling and the other two organs of the State – Parliament and Judiciary- have to perform their respective obligations, of course, within the parameters of the Constitution. Parliament has to act in order to fulfill India’s international obligations under the human rights treaties. It is submitted that there is a constitutional duty on Parliament in this regard. Parliament is a “State” under Article 12 and a duty to respect “international treaty obligations” being cast on “State” under Article 51(c), Parliament is under a direct duty to implement human rights treaty obligations. During 62 years of the Constitution coming into force, Indian Parliament has enacted nine specific legislations that are intended to implement international human rights treaties. At present four Bills are also pending in this regard. However, out of nine core UN human rights treaties only CRC is internalized. The Parliament has come very close to internalize ICCPR and ICESCR through Protection of Human Rights Act, 1993 but the limitations imposed under Section 2(d) and 2(f) whittled down the process. Though there was recommendation by the NHRC to remove this limitation and an attempt was made in 2006 by the Parliament while amending the 1993 Act, but only added “any other Covenants that may be prescribed by the Central Government” in Section 2(f). The narrow definition of “Human Rights” and “International

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3 Article 73 of the Constitution reads as- Extent of the executive power of the Union.- (1) Subject to the provisions of the Constitution, the executive power of the Union shall extend- (a) to the matters with respect to which Parliament has power to make laws,….” (Emphasis supplied).

Covenants” under Section 2(d) and 2 (f) continue to obscure the domestication of international human rights in India.

Thus, given the absence of specific provision under the Constitution of India as to the implementation of human rights treaties, the issue that needs to be addressed is that, which organ of the State is best suited to enforce international human rights treaties in India? The answer to this question is undoubtedly the judiciary. When other organs of the State including Parliament are lethargic in their approach in implementing human rights treaty obligations, judiciary as one of the organs of the State and torch bearer of the rule of law and justice is best suited to enforce the international human rights treaties to which India is a Party. Though, each organ of the State including judiciary is required to act within the parameters of the Constitution, it goes without saying that the primary duty of “independent judiciary” is to uphold the rule of law and administer justice which is one of the basic Structure of the Constitution.

Until Vishaka, Indian judiciary was reluctant to enforce international human rights treaties. In A.K. Gopalan⁵, Justice S.R. Das while interpreting the word “procedure established by law” under Article 21, went on to observe that, if a law provided that the cook of the Bishop of Rochester be boiled in oil, it would be valid under Article 21.⁶ It took almost 28 years for Supreme Court to say that “the procedure established by law” under Article 21 must be “fair, just and reasonable” and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and that the requirement of Article 21 would not be satisfied.⁷ Similarly, in Jolly George,⁸ Justice V.R. Krishna Iyer was categorical in saying that international human rights treaties cannot be enforced at the instance of an individual at the domestic courts and that a law by Parliament is a must in this regard. It took 19 years for the Supreme Court to say that in the absence of domestic law occupying the field, to formulate effective measures, the International Conventions and Norms are to be read into to fill the gap.⁹ Thus, Vishaka was categorical at least to the extent that, when

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⁶ This observation is gathered from the reading of his separate but concurring judgment at para 306. The learned judge was of the opinion that when Parliament can prescribe a law that a person’s life can be taken away by hanging by neck and the same being valid, no objection could be taken if law prescribes death sentence by boiling in oil.
⁷ Maneka Gandhi v. Union of India, AIR 1978 SC 597.
there is a vacuum/gap in municipal law, the provisions of international human rights could be relied upon to fill the void.

It is submitted that there is void in the Constitution of India as far as the legal status of “international treaties” is concerned. As a result, each organ of the State is complacent in its duty pointing finger at the other organs. The Union Executive (Central Government) washed its hands saying treaties are non-self executing in India\textsuperscript{10} and on the other hand Parliament washed its hands saying enforceable by courts in India\textsuperscript{11} knowing fully well that Supreme Court, by then, has already washed its hands by saying international human rights Conventions are not enforceable at the instance of an individual unless Parliament enacts an enabling legislation to that effect.\textsuperscript{12} Further, at the time of enactment of 1993 Act, the Supreme Court has also made it clear that in the event of conflict between municipal law and international law, it is the former that prevails and the latter has to yield before municipal law.\textsuperscript{13} Even the Bangalore Principles (Judicial Colloquium on the Domestic Application of International Human Rights Norms, 1988 held at Bangalore) did not authorize the judicial incorporation of international human rights treaties by the back door. Of course, in the recent past, the Supreme Court enunciated the law that international human rights Conventions could be relied when there is void in the municipal law.\textsuperscript{14}

But, the point is, the position of the law/stand taken by the Supreme Court prior to the passing of 1993 Act on enforceability of international human rights treaties in India, the stand of the Supreme court was clear as said above, however the Parliament chooses the Judiciary to shoulder this responsibility.

Needless to emphasize that the rights enshrined under international human rights treaties offer more protection than the rights provided under the Constitution and other Statutes in India. The fact that the Supreme Court enlarged the scope of Article 21 to embrace various rights\textsuperscript{15} within its ambit and the judicial amendment of

\textsuperscript{10} Third Periodic Report submitted to the Committee on ICCPR in 1997.
\textsuperscript{11} Section 2 (d) of the Protection of Human Rights Act, 1993 that reads as- “human rights” means 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”. (Emphasis supplied).
\textsuperscript{12} Jolly George, Supra note 7.
\textsuperscript{13} Ibid.
\textsuperscript{14} Vishaka, Supra note 8.
\textsuperscript{15} Right to live with human dignity, right to healthy environment (pollution free water, protection against hazardous industries), free education up to 14 years, right to health, right to medical aid, right to privacy, right to free legal aid, right to fair trial, right to speedy trial, right to shelter, right to livelihood etc. See Chapter 4 for case law on these rights.
Section 51 of Code of Civil Procedure\textsuperscript{16} are examples of inadequacy of human rights content under the Constitution of India. The Constitution of India was adopted on 26\textsuperscript{th} November 1949 and at that time there was no international human rights treaty which could influence the framers of the Constitution and the probable implications of international engagements in the area of “human rights”. This does not mean that they were not aware of the implications of the treaties. But, the point is in relation to “human rights treaties” which differ from other types of treaties as discussed above.\textsuperscript{17}

No attempts have been made to strengthen the human rights content in the Constitution in these 62 years of journey with it. It is not that need was not felt, but it is of attitude- disregard for basic human rights- and the lack of spirit in this regard. Protection of human rights is key to the development of a nation as it strengthens the democratic values, provides conducive environment for overall growth of people and society at large. Today, no nation can afford to ignore human rights issue as it has become grammar/language of governance. The content and intent of human rights are not regional or national in its application but are of universal in nature and this aspect truly reflects in the international human rights treaties including the UN Nine Core Human Rights Treaties. Thus the promise that a State makes under international human rights treaty to give effect to human rights at the domestic level must be kept by translating it in terms of action through legislative measures by Parliament, interpreting such laws in the spirit of human values by the Judiciary and executing such laws in the larger interest of society by the Executive.

9.2 Suggestion/Recommendations:

Considering the significance of international human rights treaties, the obligations India incurred, and the obscurity prevailing in the Constitution as far as implementation of international human rights treaties, the efforts made by Indian Parliament and Judiciary in implementation of such treaties as discussed in this research study, the researcher makes the following suggestions/recommendations;

1) **A specific law on Entry 13 and 14 of List 1 in VII Schedule should be enacted**: The Constitution of India does not provide any formal procedure for discussion and ratification of international treaties. Parliament is empowered

\textsuperscript{16} Jolly George, Supra note 7.

\textsuperscript{17} UDHR was proclaimed on 10\textsuperscript{th} December 1948, just a year before the Constitution of India was adopted and it is a mere Declaration.
to legislate on the *subject* of “entering into” and “implementation” of international treaties; however till date Parliament has not enacted any law on the subject. This vacuum has given the Union Executive to enter into any treaty and thereby commit the whole country of international obligation by exercising its power under Article 73. In order to avoid this monopoly of the Union Executive, the Parliament must enact a law on Entry 13 and 14 of List 1 in VII Schedule of the Constitution. Any law that provides for treaty making power and implementation of it should include the following;

a) Clear norms for prior consultation with the Parliament and the people of India in respect of particular kinds of treaties, such as treaties that involves i) expenditure including purchasing of defense materials, ii) creation of new rights/ modification of rights in the Constitution or Statutes, iii) affecting private rights of individuals, iv) alteration of laws, v) acquisition or deletion of territories, etc. In this regard a Parliamentary Committee consisting of Members of all Parties should be constituted for consultation.

b) Framework within which information is imparted not just to the Parliament but the people on the contents and impact of treaties.

c) Framework within which reactions of the people should be considered in a transparent manner.

d) A time limit within which the process of consultation with the Parliament and people should be completed.

e) A declaration that no treaty will be considered as valid and binding unless and until above stated procedures has been complied with.

2) **An independent National Committee on International Treaties (NCIT) should be constituted:** The NCIT should consist of experts in the field of International Law and Diplomacy. The responsibilities of such an institution *in relation to human rights* should include the following;

a) To submit to Central Government, Parliament or any other competent body, on an advisory basis, opinions, recommendations, proposals and reports on any matter concerning the promotion and protection of human rights;

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18 Entry 13 and 14 of List 1 in VII Schedule of the Constitution
b) To promote and ensure the harmonization of national legislation, regulations and practices with international human rights instruments, and their effective implementation;
c) To encourage ratification or accession to international human rights instruments, and their effective implementation;
d) To contribute to reports which the State is required to submit to treaty monitoring bodies;
e) To co-operate with the United Nations and other agencies and institutions in the areas of promotion and protection of human rights;
f) To assist in the formulation of programmes for the teaching of, and research into human rights and to take part in their execution in schools, universities, professional circles and Government agencies;
g) To contribute to increasing public awareness of human rights.

3) Section 2(d) and 2(f) of Protection of Human Rights Act, 1993 be amended forthwith: The definition of “Human Rights” and “International Covenants” provided under Section 2 (d) and 2 (f) of the 1993 Act is too narrow and it goes without saying that, these two definitions have defeated the purpose of the Act to some extent. The NHRC, SHRCs and District Human Rights Courts are disabled to apply and enforce rights enshrined under international human rights Covenants because of the limitations imposed under these definitions. The definition on “Human Rights” under Section 2 (d) should read as: “Human Rights” includes the rights guaranteed under the Constitution and under International Covenants/Conventions to which India is a Party”. In view of this recommended definition, the definition of “International Covenant” under Section 2 (f) becomes obsolete and hence be deleted. The proposed definition is in tune with the NHRC’s recommendation on this point that was made in the First Report itself in 1995.

4) State Human Rights Commissions (SHRCs) be made mandatory: At present 18 out of 30 States have constituted SHRCs. The 1993 Act does not make constitution of SHRC in every State compulsory. The SHRCs are best suited to reach the people as they operate within the State and for common
man also it would be easier to approach and seek justice. Hence Section 21 (1) be amended and the word “may” be substituted with “shall”. The proposed amended Section 21 (1) should read as: “A State Government shall constitute a body to be known as the……..”

5) “One Year Limitation” to file complaint be deleted or Section 5 of Limitation Act, 1963 be made applicable: Section 36 (2) debars the NHRC and SHRCs from inquiring into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed. The 1993 Act does not even provide for application of Section 5 of Limitation Act, 1963 for the condonation of delay.19 This prohibition indirectly suggests that the victim should file complaint within one year from the date of alleged act of violation of human right. This limitation is nothing but rubbing salt on the wound. Because, there may be compelling reasons for the victim in not approaching NHRC or SHRCs within a year. Under such circumstances, he should be given an opportunity to explain the delay. Hence, it is suggested that it would be better if “one year limitation” be deleted or in the alternative it is strongly recommended that Section 5 of Limitation Act, 1963 be made applicable.

6) Recommendations of NHRC and SHRCs under Section 18 be made binding: Under Section 18 of 1993 Act, the recommendations of NHRC and SHRCs are not binding on Government. Though most of the recommendations made by NHRC or SHRCs have been accepted by the Government especially in matters of compensation, it is desirable that the recommendations be made binding. For this a clause may be added in Section 18 to the extent that “recommendation made under this Section will be deemed to be binding if the Government concerned does not question the same within 60 days from the date of receipt or communication of the recommendation before the appropriate forum”.

19 Section 5 of Limitation Act 1963 provides for extension of time prescribed period on the ground of “sufficient cause” being shown for not preferring appeal or application.
7) **Special District Human Rights Courts be made mandatory and be empowered to award compensation:** Section 30 of the 1993 Act provides that State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify Sessions Court as District Human Rights Court to try offences arising out of violation of human rights. The existing Sessions Courts are already burdened with thousands of cases. No purpose would be served by specifying such Courts as “Human Rights Courts”. Further, the word “may” has made it optional for the State Government to constitute such Courts and only five States have done so far.20 Hence it is suggested that Section 30 of 1993 Act should be amended suitably to make “Special Human Rights Courts” mandatory.

Further, Section 30 does not empower the Court to award compensation to the victim or his legal representatives. This leads to multiplicity of proceedings and hence it is recommended that the Court be empowered to award compensation to the victim or his legal representatives.

8) **Special Human Rights Courts Rules be framed by the Central Government:** Chapter VI of the 1993 Act contains two Sections providing for the constitution of District Human Rights Court (Section 30) and appointment of special public prosecutors to such Courts (Section 31). The 1993 Act does not specify as to what Rules are to be followed by these Courts. The absence of this mandate under the 1993 Act leads to different Rules being framed by State Governments. To avoid this, the 1993 Act, be amended suitably providing powers for the Central Government to specify Rules. The proposed Rules should also deal with committal of cases to the proposed Special Human Rights Courts by the Magistrate Courts. It is because under Section 193 of Code of Criminal Procedure (Cr.P.C. in short) Sessions Courts cannot take cognizance of offences unless the case has been committed to it by the Magistrate. This anomaly is prevailing in the existing 1993 Act.

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20 Only Tamil Nadu, Assam, Andhra Pradesh, Sikkim, Karnataka and West Bengal have notified Sessions Courts as Human Rights Courts in terms of section 30 of the Act.
9) Define “offence arising out of violation of human rights”: Section 30 does not define what constitute “offence arising out of violation of human rights”. In the absence of this, one has to fall back upon the acts that are prohibited under the penal laws in India, then relate them to human rights and if the court comes to the conclusion that it constitutes “offence arising violation of human rights” a case could be proceeded with. This would lead to chaos and the very purpose of the Section 30 would be defeated. Hence, it is recommended that Section 30 be amended to provide definition on “offence arising violation of human rights”. An Explanation to the Section 30 on this would suffice.

10) NHRC be empowered to investigate and report to the Central Government of complaints against Armed forces: Under Section 19 of 1993 Act, the NHRC after receipt of complaint of violation of human rights by the Armed Forces has to seek a report from the Central Government and after receipt of the report it may make only recommendations thereon. It is not clear whether NHRC can make independent inquiry into the matter after the receipt of the report. Here two issues crop up: (a) no time limit is prescribed for Central Government to submit report to the NHRC and (b) incriminating evidence, material could be wiped out in this process by the mighty Armed Forces. Instances of violations of human rights by the Armed Forces have been reported to the NHRC from Jammu and Kashmir area and Assam. These two States are victims of terrorism and illegal immigrations. Though it is a sensitive issue, it is suggested that NHRC be provided independent powers to investigate into such complaints and report thereon of the necessary action by the Central Government.

11) Restriction on NHRC as to “no inquiry shall be conducted on a matter pending before a Commission duly constituted under any other law” be deleted. Under Section 36 (1) of the 1993 Act, the NHRC cannot proceed with the inquiry if the matter is already seized by a Commission constituted under any other law. This provision could be misused by the Government by constituting a Commission under the Commission of Inquiry Act, 1952 or
prompting a complaint before any other Commissions\textsuperscript{21} which are largely represented by the political appointees before the NHRC could take up the issue. Hence, it is strongly recommended that such a restriction appearing in second part of Section 36 (1) be deleted.

12) \textbf{Human Rights Education and Training:} Law protects those who are vigilant about their rights. However, one needs to know their rights and available remedies under law to initiate legal action. India largely lives in villages and one third of its population is illiterate.\textsuperscript{22} Even most of literates and so called educated are unaware international human rights treaties and their implications at the domestic level. Hence it is recommended that Human Rights Education containing nine core UN human rights Conventions be given priority at the schools and college level. Special programmes and training for the bureaucrats, police, legislators and judges and lawyers be organized effectively on periodic basis.

9.3 Major Findings:

1. The Constituent Assembly Debates on the Draft Article 60, 230 and Item No.14 and 16 of the Constitution (currently Article 73, 253 and Item 13 and 14 of List 1 of VII Schedule) reveal that the Framers of the Constitution were of the view that international treaties be placed before the Parliament for debate and necessary approval.

2. Article 253 is not a ratification clause as said in \textit{Smt. Selvi and others v. State of Karnataka} (AIR 2010 SC 1974). Article 253 provides an exception to the legislative competence of State Legislatures. That is, if the subject of an international treaty, agreement, convention or decision taken at international conference falls within the Concurrent List (List III) or State List (List II) of Seventh Schedule, only Parliament has power to legislate with respect to implementation of treaty and not State Legislatures. Mere ratification of

\textsuperscript{21} National Commissions such as 1) Minorities, 2) Scheduled Caste, 3) Scheduled Tribe, 4) Backward Classes, 5) Women, 6) Safai Karmacharis, 7) Child Rights.

\textsuperscript{22} http://censusindia.gov.in/2011-prov-results/data_files/india/Final%20PPT%202011_chapter6.pdf Visited on 15-08-2012 at 6.30 pm.
international human rights treaties does not confer legitimate expectation among beneficiaries (individuals) of human rights and accordingly on that premise rights enshrined under international human rights treaties cannot be enforced.

3. Unlike American Constitution, the Constitution of India does not provide any process of ratification of international treaties. Ratification is purely an executive act in India and the consent of the Parliament is not necessary before ratification. It is because of this reason that international human rights treaties do not become part of corpus juris of India upon ratification. An enabling legislation by the Parliament is necessary to make it part of corpus juris of India since human rights treaties confer rights on individuals which is prerogative of the Parliament under the scheme of the Constitution.


5. Sarbananda Sonowal v. Union of India and another (AIR 2005 SC 2920) is a classic example of direct enforcement of international human rights treaties. However, this case has not been noticed much less used by the Bar and Bench for direct enforcement of international human rights treaties. The Supreme Court virtually enforced Article 13 of ICCPR when it said “Having regard to Article 13 of the International Covenant on Civil and Political Rights, 1966, an alien lawfully in a State's territory may be expelled only in pursuance of a decision reached in accordance with law”.

6. The decision in Xavier v. Canara Bank Ltd (1969 Ker.L.T . 927) that “the remedy for breaches of International Law in general is not be found in the law courts of the State because International Law per se or proprio vigore has not the force or authority of civil law, till under its inspirational impact actual legislation is undertaken….” is per incurium. Because, Xavier was decided on 10th September 1969 and at that time ICCPR was not in force. It came into
force on 23rd March 1976 and India acceded to it only on 10th April 1979. Thus, legally ICCPR cannot be the subject matter of enforcement in Xavier.

7. The ratio in Jolly George Varghese v. Bank of Cochin (AIR 1980 SC 470) that “international human rights treaties cannot be enforced at the instance of individuals before the domestic courts” is propounded on the influence of Xavier and hence is incorrect.

8. That, nature and scope of rights stated in international human rights treaties offer greater protection of human rights than the rights stated in the Constitution of India. The expansion of Article 21 of the Constitution in the last 62 years by the Supreme Court and the recommendations made by the National Commission to Review the Working of the Constitution (NCRWC) in its Report at Chapter-3 titled “Enlargement of Fundamental Rights” suggesting various amendments to Part-III of the Constitution so as to bring it in conformity with ICCPR substantiate this finding.

9. That, domestic implementation is the primary mechanism contemplated by the United Nations Nine Core Human Rights Treaties to give effect to the individual rights stated therein and the reporting system, inter-state complaint system and individual complaint system are designed to monitor/supervise the implementation of the treaties at the domestic level and hence are secondary means of implementation. Article 2 (2) of ICCPR substantiates this finding. It says that “where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant”. The other eight Conventions have more or less similar provision calling for legislative incorporation of rights stated in therein for effective protection at the domestic level.

10. The Union Executive in India is free to enter into any international treaties, however, its implementation and enforcement is subject to the provisions of the Constitution. The opening line in Article 73-“subject to the provisions of
this Constitution” substantiates this finding. Thus, if the subject of the international treaty is within the prerogative power of the Parliament, like, creation of rights, amending, repealing or modifying statutes, etc., Union Executive cannot implement international treaties of its own.

11. That the doctrine of legitimate expectation cannot be applied to enforce the treaty rights/obligations against the State. Because, the concept of legitimate expectation is inapplicable in the context of the scheme of the Constitution of India governing the implementation of International (human rights) Treaties and also it amounts to enforcing the treaty rights/obligations from the back door.